IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12/12/2002

Coram

The Honourable Mr. Justice P. SHANMUGAM
and
The Honourable Mr. Justice M. CHOCKALINGAM

Criminal Appeal No.895 of 1997 and Criminal Appeal No. 896 of 1997
and Criminal Appeal No. 897 of 1997
and
Criminal M.P. Nos.780 to 782 of 1998

Chandradevi (A-3) .. Appellant in
C.A. No.895 of 1997

1. Kamalanantha (A-2)
2. Balan @ Balendran (A-4)
3. Mayilvaganan (A-5)
4. Nanda @ Nandakumar (A-6) .. Appellants in
5. Sathish @ Sathiskumar (A-7) C.A. No.896 of 1997

Premananda @ Premkumar .. Appellant in
@ Ravi (A-1) C.A. No.897 of 1997

-Vs-

State of Tamil Nadu
by Inspector of Police,
C.B., C.I.D., Pudukkottai
(Crime No.1183 of 1994 of
Viralimalai Police Station) .. Respondents in all
the three appeals.

Prayer: Appeals against the judgment of the learned Principal Sessions Judge, Pudukkottai Division at Pudukkottai dated 20.8.1997 made in Sessions Case No.7 of 1996.

!For Appellants : Mr. U.R. Lalith,
Senior Counsel assisted by
Mrs. D. Revathi for
appellant (A-1) in
C.A. No.897/97

Mr. Shanmuga Velayutham
for appellants 1, 2, 4 and 5
(A-2, A-4, A-6 & A-7) in
C.A. No.896/97

3rd appellant (A-5) in
C.A. No.896/97 died.

Mr. M.G.L. Sankaran
for appellant (A-3) in
C.A. No.895/97

^For Respondents : Mr. M.S. Kandasamy,
Special Public Prosecutor.

Mr. K.G. Kannabhiraman,
Senior Counsel assisted by
M/s. Sudha Ramalingam
for the impleading parties
in the Crl. M.Ps.

:J U D G M E N T

P. SHANMUGAM, J.

The above appeals arise out of the judgment of the Sessions Court of Pudukottai Division at Pudukottai in S.C. Nos.7 of 1996, etc. The Sessions Court found the accused/appellants guilty under various charges and convicted them as follows :

Charge	Offence	Accused	Convicted/ Acquitted	Sentence
Charge-1	Conspiracy S.120-B IPC	A1 to A7	Conviction	No separate Sentence
Charge-2	376(2)(C) IPC (14 counts)	A1	Conviction for 13 counts P.Ws.3 to 15	Life + Rs.5,10,000/= i/d 2 years, 6 months under each count. Life sentence for 13 counts to run concurrently.

Charge-3
S.376/109 IPC

A2 to A7
A2 to A7 u/s.376/109 IPC
Life imprisonment for A2, A4 to A7 - 2 years, 7 months 2D and fine Rs.10,000/=
i/d 3 months RI for A3.
Charge-4
S.354 IPC (4 counts)
ref:P.W.3, P.W.5, P.W.10, D.W.10
A3
Conviction 354 IPC-(1 count only) with regard to P.W.10 - Acquittal w.r.t.
P.W.3, P.W.5, D.W.10.
No Separate Sentence

Charge-5
Sec.313 IPC
(8 counts) P.W.4, P.W.5, P.W.6, P.W.7, P.W.9, P.W.13, P.W.14, P.W.15
A3
Conviction of A3 u/s.312 IPC
(4 counts) w.r.t. P.W.4, P.W.5, P.W.6, P.W.14 - Acquitted w.r.t. P.W.7,
P.W.9, P.W.13, P.W.15
2 years 7 months 2D + Fine Rs.5,000/- i/d 45 days R.I. (Total fine
Rs.20,000/-)

Charge-6
S.302 IPC
S.302/34 IPC

A1
A2
Conviction u/s 302 IPC - A1

Conviction u/s.302/34 IPC - A2

Life Impisonment + fine Rs.10,000/- i/d R.I. for 3 months.
A2 - Life imprisonment + fine Rs.10,000/- i/d. R.I. for 3 months
Charge-7
S.302/109 IPC
A4 to A7
A4 to A7 Convicted u/s.
302/109 IPC
A4 to A7 Life imprisonment + fine Rs.10,000/- i/d. 3 months R.I.
Charge-8
S.343 IPC
A1,
A2,
A4 to A7
A1, A2, A4 to A7 - Convicted u/s. 343 IPC
No separate sentence

Charge-9
S.201/302 IPC
A5 to A7
Convicted - A5 to A7 u/s. 201/302 IPC
A5 to A7 Sentenced to R.I. for One year + fine Rs.2,500/- i/d R.I. for one month.
Charge-10
S.201/114 IPC
A2
A2 is convicted u/s.201/114 IPC
A2 is sentenced to R.I. for one year + fine Rs.2,500/- i/d. R.I. for one month.
Charge-11
S.506 II IPC (4 counts) P.W.4, P.W.5, P.W.6 and P.W.9
A1,
A2,
A4 to A7
A1, A2, A4 to A7 Convicted u/s.506 II IPC (2 Counts) P.W.4, P.W.6 only. Not guilty w.r.t. P.W.6, P.W.9.
No separate sentence
Charge-12
S.420 IPC
A1
Convicted u/s.420 IPC
R.I. for one year.

2. Three sets of appeals are before us. Criminal Appeal No.895 of 1 997 is filed by the third accused in the case. Accused Nos.2, 4, 5, 6 and 7 have filed Criminal Appeal No.896 of 1997. Since the third appellant, namely the fifth accused in the case, is reported to have died, Criminal Appeal No.896 of 1997 abates insofar as the third appellant is concerned. The first accused has filed Criminal Appeal No.89 7 of 1997.

3. The facts of the case are stated hereunder :-
A news item in "The Indian Express" dated 15.11.1994 under the caption, "Tale of the two who were able to get away" (Ex.D.29), followed by a complaint, Ex.P.25 dated 16.11.1994 given by R. Sureshkumari @ Baby to the Inspector of Police, Viralimalai has laid the foundation for this unparalleled and sensational case of rape of 13 girls and one murder in an Ashram near Tiruchirappalli. In that brief complaint, Sureshkumari has stated that she joined the Premananda Swami Ashram, Mathalai, Sri Lanka when she was six years of age. She was taken to India by the Swami along with 12 other girls in the year 1984 when the ashram was formed at Tiruchy. She had alleged that she was subjected to sexual harassment by the Swami four times even before she attained puberty at the age of 13 and that she was raped within a month on her attaining puberty by the Swami by threat and by beating her with stick. Unable to withstand this torture, she left the ashram at the age of 14 and came to Madras, but she was caught by the police and sent back to the ashram. Inspite of her complaint to her mother, she did not come forward to help her and she had to suffer the torture in the ashram as she had no other place to go. She came to know from some inmates of the ashram that Premananda had not

only raped her, but also many other girls in the ashram, and she recorded their conversation in a cassette. In these circumstances, she approached one of her relatives, Ananda Mohan who helped her and Latha, another inmate, to come out of the ashram to Chennai, with the assistance of a Women Organisation. In the ashram, Premananda would not allow them to talk freely to others and they were compelled to undergo this ordeal. Divya Devi knew all this and was abetting the misdeeds of the Swami. Ultimately, unable to bear the torture, she left the ashram on 1.11.1 994, but could not gather the courage to give a police complaint. However, with the assistance and encouragement given by the All India Women Democratic Association and in order to see that other girls also are not subjected to the same fate, she had come forward to expose the misdeeds of the Swami and the suffering undergone by her even at the cost of her dignity and modesty. She had stated that many girls had to undergo abortion because of the rapes committed on them by the Swami. She had alleged that one Balan had acted as a pimp for the Swami. She had requested for an appropriate action against the Swami, Divya Devi and Balan. The subsequent news report on these allegations was followed by the registration of a crime, investigation, enquiry, seizure of incriminating documents, materials, evidence and filing of charge sheet.

I. Background

4. The further facts with a little more background of the case are as follows :-

One Premananda alias Prem Kumar alias Ravi, son of Somasundaram Malavarayar, called Swami Premananda, was running an orphanage in the name of Boopalakrishna Ashram, Mathalai at Sri Lanka. Due to the ethnic violence in that region, Swami Premananda came over to India in the year 1984. About 12 young Tamil girls and a few women, who were in the ashram in Sri Lanka, were also brought to Tiruchy through Rameswaram and Vedaranyam by boat. Initially, Swami Premananda set up an ashram in a rented building at Tiruchy and then shifted and constituted it into a big institution at Fathima Nagar in the year 1989 in a sprawling space spread over nearly 150 acres. The ashram had in itself, laid out areas for residence, eating place, press, school, etc. Admittedly, about 100 girls and 100 boys, mostly orphans, were staying in the ashram. There are separate hostels for the stay, education and training for boys, girls and women. Besides, the devotees as well as the parents of some of the children were also living in the various quarters in the ashram. The ashram was obviously headed by Swami Premananda (Accused No.1) for the spiritual upliftment of the devotees and assistance of the inmates. The Swami claimed to have mystic powers and perform miracles to materialise viboothi (sacred ash) and Lingams from stomach (Lingothbhavam). It is stated that four poojas were performed everyday and the first accused used to give spiritual discourses, apart from giving 'Arulvakku' (Trance-Interviews) on weekend days and full moon days. It is claimed that the ashram has branches all over the world, especially in England, Switzerland, Belgium, Sri Lanka and other countries. A number of devotees coming from abroad were also staying in the ashram. There were different categories of people in the ashram, namely Sanyasins who were called 'Mathajis', assistants, devotees, orphans, etc.

5. P.W.3 to P.W.16 (excepting P.W.4 and P.W.6) and P.W.55 are girls who had joined the ashram in Sri Lanka in their tender ages and subsequently

shifted to India and depended on the ashram for their food, shelter and clothing. Being immigrants from Sri Lanka with no papers and nobody either to take care of them or make any provision for their future, they were under the total control and mercy of the authority of the ashram.

6. During the period between 1990 and October 1994, which is the charge period, it is alleged that Swami Premananda (A-1) committed rape on 13 girls. It is seen from the allegations that A-1 used to commit rape immediately some time after the girls attain puberty while they were put on guard duty during nights and at other odd hours and places. A-2 to A-7 assisted and abetted the acts of A-1. It is also alleged that one Ravi, who had tried to expose the misdeeds of A-1, was done to death and was buried in the ashram itself. The allegations that a spiritual guru misused the faith reposed in him by the devotees, and a father-like person had raped tender girls, subjected them to torture and the murder of one Ravi, another inmate of the ashram, had created a sensational news, resulting in the investigation, commencing from Ex.P.25, complaint dated 16.11.1994 referred to above.
7. On the basis of the said complaint, a case was registered before the Viralimalai Police Station in Crime No.1183 of 1994 on 17.11.1994 under Sections 142 and 376 of the Indian Penal Code. Miss Sureshkumari and Miss Latha were examined by the Inspector of Police, P.W.61. They were medically examined in pursuance to the requisition sent by P.W.61 as per the permission granted by the Chief Metropolitan Magistrate. Thereafter, on verifying the statements on 19.11.1994, Section 506(2) I.P.C. was added to the case and a report, Ex.P.197 was submitted. A team of seven Inspectors of Police was constituted to investigate the case. In the morning of 19.11.1994, at 9 am, the ashram was inspected in the presence of P.W.29, the Village Administrative Officer and other witnesses (Ex.P.68 is the Observation Mahazar and Ex. P.199 is the Rough Sketch) and on the same day, P.Ws.4 to 10 were examined and their statements were recorded by P.W.62. P.W.3 was examined by P.W.57 on the same day. A-1 was arrested at 11.30 am on 19.11.1 994. The victim girls, viz. P.W.4 to P.W.14, P.W.55, D.W.31, D.W.33 and one Vasantha, Kanchana and Geetha were medically and radiologically examined by P.W.19, P.W.20, P.W.21, P.W.22 and P.W.23 on 19.11.199 4 and on 21.11.1994. A-1 was also medically examined on 20.11.1994.

8. In the medical examination, the victim girls namely P.W.4 to P.W.15 and P.W.55 were found to have been accustomed to sexual intercourse. All the victim girls were sent for radiological examination for determining their age. Their statements under Section 164 Cr.P.C. were recorded by the Judicial Magistrate No.I, Pudukkottai. A-2 to A-7 were arrested on 23.11.1994. On the basis of the admissible portion of the confession statement of A-7, that he was prepared to identify and show the place of burial of the deceased Ravi, Sections 302 and 2 01 I.P.C. were added to Crime No.1183 of 1994 in Ex.P.200, Express Report.

9. A requisition was made for exhumation of the remains of the deceased Ravi and as per the directions of the Tahsildar, they were exhumed on 24.11.1994 at 10 am in the presence of the Tahsildar, Dr. Ravi Shankar and other police officials. Ex.P.62, observation mahazar was prepared. Inquest was conducted on the body of the deceased Ravi by P.W.28 and Ex.P.65 is the

inquest report. P.W.46, who conducted the post-mortem, found eleven ante-mortem injuries . P.M.O.10 is the chemical analysis report of the soil collected from and around the various bones and human blood was detected on them. Ex.P.47 is the report of the Anthropological Division of the Tamil Nadu Forensic Science Laboratory in reference to the Super Imposition Test. P.W.47, Anthropologist, opined under Ex.P.126, report that the skull-Item No.1 in P.M.O.66 belonged to the individual seen in the life size photograph P.M.O.69, the enlarged size of P.M.O.69. Various places in the ashram were searched and articles were seized in the presence of the Village Administrative Officer on 25.11.1995, including the letters and correspondence from the kudil of A-1 and the absconding accused Divya Devi as well as that of A-2, Kamalananda.

10. P.W.1 and P.W.2, who were arrested on 21.12.1994, were examined in the presence of the witnesses and their confession statements were recorded. As they were in a remorseful mood, the investigating agency, after remanding P.W.1 and P.W.2, sent their requisition for recording their statements under Section 164 Cr.P.C., which were recorded on 29.12.1994. On the basis of the said confession statement, the investigating agency proposed to take P.W.1 and P.W.2 as Approvers and thereafter, a requisition was made to the Chief Judicial Magistrate, Pudukkottai to record the Tender of Pardon in respect of P.W.1 and P.W.2. P.W.1 and P.W.2 were summoned before the Chief Judicial Magistrate, Pudukkottai and after being satisfied, he granted them conditional Tender of Pardon.

11. One of the victim girls, P.W.14, Aruljothi, who was taken for medical examination along with the other girls and was entrusted to ' Udavum Karangal' at Madras on 21.11.1994, did not get her menstruation. On the other hand, in the month of December 1994, she developed vomitting and giddiness. While she was examined in the Government Hospital, Kilpauk on 15.1.1995 and on 17.1.1995, she was found to be pregnant. P.W.14 requested for termination of her pregnancy. On 21.1.199 5, her statement was recorded by the Metropolitan Magistrate, P.W.50. As per Ex.P.97, a requisition was sent to the Judicial Magistrate, Keeranur to direct the doctors to abort the foetus of P.W.14 and to collect the products of conception and her sample blood for D.N.A. Testing. After obtaining the consent of P.W.14, her pregnancy was terminated on 29.2.1995 by P.W.44, Dr. Shantha Gokuldoss with the assistance of Dr. Kamala. Ex.P.100 is the Abortion Certificate issued by Dr. Kamala. The products of conception and 10 ml. sample blood of P.W.14 were collected in the special containers sent by the Centre for Cellular and Molecular Biology (C.C.M.B.) Hyderabad by P.W.56, Dr. Cycillia Cyril. On the same day, at 4.30 pm, P.W.35, Inspector of Police collected the sealed parcel from P.W.56 and the same was handed over in C.C.M.B., Hyderabad on 22.2.1995 at 10 am. P.W.59, Dr. Lalji Singh had issued the acknowledgment.

12. After getting the consent of A-1 Premananda, 10 ml. of sample blood was taken from him by P.W.46, Dr. Ravi Shankar on 22.2.1995 as per the direction of the Judicial Magistrate, Keeranur passed in pursuance to the requisition by the C.B.,C.I.D. Exhibit (A) Identification Card-1 is the said proforma. After obtaining the permission from the Judicial Magistrate, Keeranur, P.W.33 collected the parcel containing the sample blood of A-1 from

P.W.46. He then travelled in an air-conditioned car to Madras and the sample blood was handed over to P. W.34, Inspector of Police. The said parcel was handed over to C.C.M. B., Hyderabad by P.W.34, for which Ex.P.95 is the acknowledgment. As per Ex.P.185, Dr. Lalji Singh opined that A-1 was responsible for the product of conception/aborted foetus beyond reasonable doubt, whose biological mother is P.W.14. Exs.P.189 to P.191 are the further reports of the tests.

13. The sample writings and signatures of A-1 and A-2 were obtained in the presence of P.W.53, Superintendent of Central Prison, Tiruchy. The letters, Exs.P.8 to P.19 and P.20 series, along with the sample writings of A-1 and A-2 were sent for hand-writing expert's opinion. P.W.54, the Finger Print Expert, had opined that the disputed signatures in Ex.P.20 must have been those of A-1, Kamalananda whose sample writings are found in Ex.P.166 and P.170 series. Ex.P.171, the hand-writing expert's report, after comparing Exs.P.8 to P.19 with Ex.P.167, states that the disputed writings must have been written by A-2, Kamalananda.

14. The Inspector of Police, C.B.,C.I.D. had filed a charge sheet on 25.1.1995 on completion of investigation against A-1 to A-7 and the absconding accused Divya Devi as second accused in the original charge sheet. Despite the efforts by the investigating agency, she could not be arrested. Hence, she was declared as a proclaimed offender on 27.4.1995 by the Judicial Magistrate, Keeranur. The investigating agency could not arrest the absconding accused till 7.6.1995 and thereafter, the case against the absconding accused was split up as P.R.C. No.9 of 1995. The case against accused 1 to 7 is P.R.C. No.1 of 199 5.

15. When the accused A-1 to A-7 were questioned at length under Section 313 Cr.P.C. about the evidence and the circumstances incriminating them, all the accused denied them specifically and also contended that a false case was foisted against them. The learned Sessions Judge, after considering the prosecution witnesses P.W.1 to P.W.64 and the witnesses for the defence D.W.1 to D.W.49, the exhibits marked on the side of the prosecution Ex.P.1 to Ex.P.220 and those marked on the side of the defence Ex.D.1 to Ex.D.109 as well as the material objects P.M.O.1 to P.M.O.73 for the prosecution and D.M.O.1 to D.M.O. 37 for the defence, found the charges levelled against the

accused as having been established and the accused guilty of those charges, thereby imposing a sentence of imprisonment and fine and compensation as detailed separately. The appeals are against this judgment.

II. Submissions By Counsel

16. Mr. U.R. Lalith, learned senior counsel appearing on behalf of A-1 made his submissions under the following heads :

(1) Charge of conspiracy is unfounded.
(2) Misjoinder of charges.
(3) Charge of rape on 13 girls.
(4) Ravi's murder.

(5) Charge of cheating.

16(a) According to the learned senior counsel, the charge does not set out the particulars like the age, date and the manner of the act etc. and that the charge is rolled into one of the rape of all the 13 girls, which has caused great prejudice to the appellants. This had also caused judicial bias against the appellants. According to him, the mandatory requirements of the charge as se t out under Sections 21 1, 212, 213, 213(b), 218, 219, 220 and 223 of the Code of Criminal Procedure, 1973 have not been complied with. He pointed out that even at the initial stage, the attention of the court was drawn to this infirmity. In terms of Section 464, there is a failure of justice because of the legal bias and prejudice by allowing inadmissible evidence, for instance, the correspondence by A-2 with Mathaji and the marking of the photographs. He further submits that the conduct of A-1 is not an issue and that evidence has been permitted to be led in to paint A-1 as a womanizer and of an immoral character.

16(b) Learned senior counsel submits that there was no predetermined plan, and even P.W.1, the approver, does not give the particulars of such a plan. It is highly improbable to accept that highly qualified persons like the accused in this case would stoop to the level of agreeing with the said conspiracy of abetting the commission of rape.

16(c) The learned senior counsel also submits that the ashram is an institution for spreading spirituality and the same cannot be treated as an institution for women. According to him, there were men and women, boys and girls and it is not exclusively meant for women. Besides, A-1 has no final authority over the administration of the ashram. Therefore, the question of applying the presumption under Section 114(a) of the Indian Evidence Act, 1872 does not arise. The ashram is a place of voluntary spiritual activity and there is no compulsion that anybody should stay in the ashram. The inmates were staying in the ashram on their own volition. The trial court did not go into this question at all.

16(d) According to the learned senior counsel, the court below has failed to consider that the mandatory requirement of Section 160 Cr.P.C. was violated while taking statements from the victim girls and they were illegally subjected to medical examination.

16(e) Insofar as the charge of murder is concerned, the learned senior counsel submits that the defence witnesses, D.Ws.1, 8, 12, 2, 11, 19 and 22 have all clearly spoken to the fact that the deceased Ravi was an insane person and it is supported by the medical evidence of D.W.46 and Ex.D.66. The trial court had accepted the case of the defence that Ravi suffered insanity during lucid intervals. According to him, there is inordinate delay in registering the complaint of the death of the said Ravi. In Ex.P.25, there was no mention about the murder of Ravi. The oral evidence led in on the side of the prosecution namely P.Ws.1, 3, 5, 8, 11, 16, 17 and 18 are unreliable. All the witnesses admit that they did not mention about the murder in their statements before the police and in their Sec.164 Cr.P.C. statements and therefore, according to him, it is clear that the evidence given by the

witnesses before the court is tutored. There is ample evidence to show that the prosecution witnesses were beaten up, pressurized and offered compensation for deposing against the appellants.

16(f) The learned counsel also submits that there are vital contradictions in the evidence of the victim girls, namely that none of them have spoken to about the alleged rape in their statements under Sections 161 and 164 Cr.P.C. Their subsequent statements are only out of inducement and under pressure and therefore, their evidence cannot be worthy of acceptance.

16(g) According to the learned senior counsel, in rape cases, especially in case of a statutory rape, the date and time are important factors and the longer the time, the more the requirement for corroboration. In case of P.W.14, though the police knew the date of her rape, there is no specific charge.

16(h) The learned counsel went on to submit that insofar as the case of statutory rapes against P.W.6, P.W.8, P.W.9 and P.W.10 are concerned, their medical evidence show their age as 16 to 18 years. In the absence of clear evidence, it is unsafe to rely on the medical evidence in this case.

16(i) The learned senior counsel submits that the evidence obtained from the victim girls, including the medical evidence, is taken contrary to the mandatory requirement of Section 160 Cr.P.C. and that their statements were not voluntary and have to be looked with suspicion.

16(j) By referring to the evidence of the victim girls individually, learned senior counsel submits that there are contradictions and improvements in their evidence. It is only during the interregnum, i.e. between their examination under Section 164 Cr.P.C. and their evidence in the court, they have changed their stand and that was because of the pressure and inducement and hence, their statements made before the court should not be accepted. According to him, while their initial statements were spontaneous, their subsequent statements were cooked up and made up to suit the convenience of the prosecution.

16(k) Though no grounds are raised in the Memorandum on the D.N.A. Fingerprinting, it is submitted that D.N.A. Science itself is not an accepted science even in the United States of America. In any event, the learned senior counsel submits that the prosecution has not followed the caution required before relying on those reports. On the merits of the D.N.A. results, it is submitted that the method adopted for D.N.A. Fingerprinting is not a valid and approved one. According to him, the defence did not have the opportunity of access for inspection and the evidence, which is contrary to the D.N.A. test protocol. It is further submitted that the doctor who had conducted the test, namely Dr. Rao, has not given any evidence and hence, P.W.59 is not a competent person to speak on the same. It is his submission that the C.C.M.B., Hyderabad has stopped their testing in the year 1991 and therefore, they are not competent to conduct the tests.

16(l) In reference to the murder of Ravi, learned senior counsel

assailed the post-mortem certificate and the opinion of the doctor. According to him, there is inordinate delay in reporting the murder and the prosecution theory is most improbable inasmuch as the alleged occurrence of beating and the consequential death of Ravi was a daytime incident and admittedly, no other independent witnesses have been examined to prove the case of the prosecution. He further submits that the open funeral procession of Ravi shows that nothing was secret. According to him, P.W.1 had an axe to grind and reasons for speaking against A-1 and the approvers have been won over by the prosecution since the arrest of P.W.1 and P.W.2 was made a month after the arrest of the other accused and their application for bail was also not opposed and hence, their statements and evidence is unreliable.

16(m) The learned senior counsel alternatively submits that assuming the injuries caused to Ravi are established, it could be only categorized as an offence under Section 325 I.P.C. and that insofar as the offences against the girls namely rape is concerned, Section 376(2)(c) is not applicable. The court, according to him, ought not have imposed fine and compensation, which are excessive.

17. Mr. Shanmuga Velayutham, learned counsel appearing on behalf of A-2, A-4, A-6 and A-7 made elaborate submissions. According to him, even assuming that the case of the prosecution is true, the overt acts are attributed only as against A-1 and the other accused have not participated in the commission of the offence with an intention to commit the murder of Ravi. In any event, according to him, they have acted only as per the directions of A-1 and therefore, there is no case of abetment in the commission of the offence. He submits that the conspiracy on their part cannot be inferred. By referring to the various charges and the overt acts attributed to the accused, learned counsel submitted that the charges have not been made out as against the other accused even as per the evidence of the prosecution witnesses themselves. According to the learned counsel, the charges of murder as well as abetment for committing the rapes have not been made out as against the other accused and the evidence on record does not prove the case of the prosecution beyond reasonable doubt. On the question of sentence, he submitted that the court has no power to impose a second sentence of imprisonment for life and there is no scope for such an imposition.

18. Learned counsel Mr. M.G.L. Sankaran appearing on behalf of A-3 submitted that A-3 is a qualified doctor and the allegations levelled against her that she had caused miscarriage are not established. Admittedly, the prosecution witnesses did not give the details as to how A-3 was responsible for the miscarriage and according to him, providing of unriped fruits and drugs are only to facilitate free flow of menstruation and against any delay caused due to hormonal imbalances. He further submits that the ingredients of the offence have not been attracted in the case of A-3.

19. Mr. M.S. Kandasamy, learned Special Public Prosecutor submitted that the prosecution has done their part faithfully in order to expose the misdeeds committed by the accused in the guise of running an ashram. The prosecution has meticulously built up and proved the case beyond doubt. He has referred to the history of the establishment of this ashram, as to how the investigation commenced and proceeded without any delay from 19.11.1994

onwards.

19(a) On the misjoinder of charges, learned Special Public Prosecutor would state that there is no prejudice or confusion in reference to the charges and that the accused did not raise the question of prejudice at the earlier stage. According to him, the arguments regarding the charges were heard on 18.4.1996 and the plea of discharge of one of the accused was dismissed on 26.4.1996 and on the same day, charges were framed and a joint memo was filed by the accused and the prosecution for a hearing on 30.4.1996 and it was only thereafter, arguments were made on the misjoinder on 14.6.1996, which were found against them and that has become final. He also submitted that from the detailed questioning of the accused under Section 313 Cr.P.C., it is seen that the accused had a fair and complete chance of knowing the details of the accusation made against them and it is clear that they were under no illusion of the charges. According to him, the accused had the advantage of engaging the leading lawyers from the national level and the State level and were defended eminently by them with all the skill at their command. Hence, according to him, absolutely no prejudice was caused to the accused.

19(b) Learned Special Public Prosecutor further submitted as all offences were committed in pursuance to a conspiracy, the letters seized, the character and behaviour of the accused, the propensity of the accused to commit the crime and the torture meted out to the victim girls, have all become relevant as per the provisions of the Indian Evidence Act. According to him, even if the evidence on the character of A-1 is excluded, there is sufficient evidence to establish the charge of conspiracy, rape and murder against the accused. He also submits that the provisions of Section 160 Cr.P.C. have not been violated in this case, since the victim girls were taken to the Pudukkottai Hospital and thereafter kept in an institution meant for women.

19(c) According to the Special Public Prosecutor, before A-1 was taken into custody, news had come out of the possibility of the arrest of A-1. The police was already in the ashram enquiring about the complaint. Taking advantage of the prior knowledge, A-1 was able to convene a meeting and in that meeting, he had warned the victim girls of drastic consequences in view of their possibility of giving evidence against him. It is specifically alleged that A-1 had emphatically told the girls that even if he was taken into custody, he would come back within two days and if anybody was found to have disobeyed his directions, they would meet the same fate as that of Ravi. Learned Special Public Prosecutor submitted that the victim girls followed the directions of A-1 like lambs.

19(d) Learned Special Public Prosecutor submitted that the investigation revealed that the ashram was not a residence and was not a safe institution to keep the women and therefore, they were shifted to the Women's Police Station at Pudukkottai and thereafter to the organisation for women at Pudukkottai and later to 'Udavum Karangal', a recognised service organisation at Madras. He submits that there was no tutoring and compulsion on the victim

girls since they were under the supervision of D.W.47, a defence witness, under whose institution they were housed till they had deposed in the court. On the other hand, he submits, that it was A-1 who had been trying to tamper the prosecution witnesses. According to him, the evidence of the approvers has satisfied the twin test of reliability and the motive alleged against P.W.1 is totally unsupported by any evidence. He states that P.W.1 and P.W.2 could not be apprehended along with the other accused as they were absconding at that time.

19(e) On the charge of murder of Ravi, learned Special Public Prosecutor submitted that the facts that Ravi was confined in a kudil and that the key for that kudil was kept by A-2 and that Ravi was found dead on 17.4.1994 and that thereafter he was buried in the ashram are not in dispute. The opinion of the doctor, P.W.46, who has given an expert opinion on the post-mortem conducted on the body of Ravi, according to him, clearly establishes that Ravi died of the ante-mortem injuries.

19(f) In reference to the rapes, it is submitted that there is no need to have a separate F.I.R. for each of the victim girls. The first information given by P.W.3 has set in motion the process of investigation of the crimes committed by the accused wherein dozens of girls were spoiled by A-1 with the active assistance and abetment of the other accused. In the accident register, though the victim girls did not name A-1, they have mentioned that they were subjected to sexual intercourse by a known person and as per the medical code, the accused were not named, but admittedly all the 13 girls were not virgins and in their evidence before the court, all of them have stated that during the relevant period, they had been tortured and rape committed on them forcibly. Whereas, the case of the accused is total denial. The victim girls have explained the reasons for their failure to mention the name of A-1 and referring to the consent for the sexual relationship in their statements under Section 164 Cr.P.C. All the girls were under the complete mercy and control of A-1 and the other accused. They were warned, threatened and therefore, they were not free to disclose completely as to what had happened to them. At that time, they should have thought that they had no safety as they were orphans and hence, the explanation should be well taken for their failure to name and implicate the accused in their statements under Section 164 Cr.P.C. According to the learned Special Publ ic Prosecutor, there is no need for any corroboration if the evidence is true and nothing more is required.

19(g) Learned Special Public Prosecutor also submitted that there was no contamination while taking the sample blood for conducting the D.N.A. testing and the testing was done as per the probes evolved by the laboratory. The D.N.A. testing is universally acceptable as on date. According to him, the non-examination of Dr. Rao who had conducted the tests will not, in any way, affect the report or the opinion of P.W.59 since the tests were also done

by Dr. Rao under the supervision of P.W.59. He submits that the medical evidence corroborates the testimony of P.W.14 and other medical evidence on the pregnancy of P.W.14.

20. We have heard the counsel for the parties in extenso and considered the matter carefully. For a better appreciation of the submissions, it is necessary to understand the location and the occurrence sites.

21. The Ashram
An institution by name Boopalakrishna Ashram was functioning at Mathalai, Sri Lanka. Premananda @ Prem Kumar @ Ravi, son of Somasundaram Malavarayar, Accused No.1 in this case, was the head of the said institution. He came over to India in or about 1983. Though the said institution at Mathalai was functioning for some time under the head of Gnanananda, the ashram was burnt down consequent on the civil war in the island nation. The inmates of the ashram, mostly children, crossed over to India through boats and reached Vedaranyam and Rameswaram. Premananda took them from these points in a van to Crapatti at Tiruchy and housed them in a rented building. The present ashram is housed in a vast area extending over 150 to 200 acres of land at Fathima Nagar near Tiruchy. The ashram was formally inaugurated in the year 1989.

21(a) Topography of the Ashram :
Four exhibits namely Exs.P.63, P.199, D.2 and D.11 are the rough sketches of the ashram. The ashram is situated on the Tiruchy-Madurai Road, 30 kilometers away from Tiruchy. The ashram has got the following separate sections :

(i) Park, Library and Visitors' Room
(ii) Pooja Hall, Nursery and V.I.P. Section
(iii) Premananda's Kudil, Guava Garden
(iv) Shop, Pomegranate Garden
(v) Girls Section, Mango Garden
(vi) Boys Dormitory, Workshop, Clinic
(vii) Dharmasala, Kitchen and Cattle Shed
(viii) Visitors' Section and Open Agricultural Lands

21(b) The main road inside the ashram has got a width of 17' x 640' and is connected by side roads of 10' width. At the entrance of the ashram, there is a canteen and semi-circle rooms called 'Kavadi Kudil'. The ashram is well laid out with buildings, park, pond, agricultural lands, mango, guava and pomegranate gardens.

21(c) The rooms in the ashram are called 'Kudils' which literally means a small house. The first accused has got a larger kudil with four rooms built in a circular form. Similarly, the Mathajis, viz., Ordained Sanyasins are having separate kudils built in a circular form. There are separate V.I.P. Rooms and visitors' room. There is a big pooja hall with a length of 104' located centrally.

21(d) Arulvakku (Trance-Interview) Room :
It is a semi-circle room attached to the pooja hall with two entrances, one from the main pooja hall and one from the main entrance hall. There is an exit door from the Arulvakku Room. Inside the Arulvakku Room,

there is a partition wall. It is in this room that A-1 used to give interviews to the devotees during weekend days and on full moon days.

21(e) School :
There is a High School upto X Standard, recognised by the Government of Tamil Nadu, wherein the inmates of the ashram and dayscholars are studying. D.W.20 is the Headmaster of the school. The school imparts education to the inmates as well as day scholars.

21(f) Girls' Section :
In between the guava garden and mango garden, there is a dormitory for girls, which is a big hall demarcated by small rooms inside. Two girls are to stay in each divided portion. There are cement constructions as sleeping benches with common toilet facility.

21(g) In Ex.P.199, the guest house, the teachers' quarters and the school are shown prominently. There are four semi-circle kudils opposite to Premananda's kudil. They are mother Nandakumari kudil, Anandan's kudil, Divya Mathaji kudil and Balan-Indu-Shyam kudil. Apart from the ladies hostel, there is also a girls home. Near the entrance, the following kudils are marked, namely Lakshmi Devi-Durga kudil, Ambikanandan kudil, Nirmala Mathaji-Sivanandan kudil, Shantha-Umadevi kudil and Nithya kudil.

21(h) Boys' Dormitory :
The boys' dormitory is located across the dividing road.

22. Though we have got a rough picture of the location of the places referred to in the case, they are not complete and we have to look into the evidence.

23. From the defence evidence, it is gathered that A-1 is a spiritual leader and the head of the ashram. He used to give discourses in Tamil, which were translated by A-2 Kamalananda. The essence of the teachings of Swami Premananda is to live according to one's own religion and that all religions ultimately lead to one road. It is stated (by the defence witness D.W.2) that the holy water given at the time of abhishekam is believed to have a healing power and the viboothi (sacred ash) and manjal (turmeric) were also used as substances for healing diseases. Swami Premananda used to produce lingams and viboothi during the nights of Mahasivarathri. According to D.W.8, A-1 is a person of the highest morality, humility, simplicity and sincerity. He is a highly evolved spiritual master and lives the life of a renunciated monk. He keeps celibacy, does not consume alcohol or drugs and he would not take non-vegetarian food. He is not a smoker and his life of austerity is meant for the people in the ashram and outsiders to follow this disciplined and simple way of life. According to the defence witnesses, the Mathajis are ordained by Swami Premananda and these Mathajis administer the institution by d ividing it into various sections. They also speak of strict rules of the ashram. For instance :
(a) Boys should not go to girls section;

(b) All the inmates should attend poojas regularly;
(c) Girls are kept in separate rooms for a period of 15 days immediately on their attaining puberty; and,
(d) All the inmates should retire to their beds by 10 pm.

The ashram is said to have branches in various countries also and some of the foreigners also have been ordained as Sanyasins. The outward appearance and the atmosphere of the ashram looks serene, peaceful, artistic and as a place meant for educating the poor and the orphans, helping the boys and girls to learn trade, providing spiritual teachings to the devotees and healing the diseased.

24. Though the defence witnesses claim that A-1 is only a spiritual leader and he had nothing to do with the administration of the ashram, it is very difficult to accept their case. By an assessment of the evidence and the circumstances in the case, it is clear that it was A-1 who had formed this ashram, developed it into a big institution and managed it under his control. Though the defence witnesses claim that there is an organisational setup as also rules and regulations for the ashram, no records to that effect have been produced. It is difficult to accept that such a big organisation with branches outside the country could be run without regulations being framed and without an organisational setup. It is in evidence that there were a hundred boys and a hundred girls, besides a number of teachers in the school. The exact number of staff or the employees and other such particulars are not given. The statement of A-1 under Section 313 Cr.P.C. (Question No.1) is that he is the "Founder and Sakthi" in conducting the Ashram. After declaring that he is the founder of the establishment, he also says that he is the spiritual head only. To Question No.32, that P.W.32 had stated to have seen A-1 kissing the girls, the reply of A-1 was that kissing the girls will not mean sexual relationship. He further says that he was moving with them as their parent.

25. From the evidence, it is seen that poojas are conducted four times a day and trance interviews are given by A-1 during weekends and on full moon days. These programmes like poojas and meetings are arranged by the girls of the ashram. There are a number of orphan girls who have come from Sri Lanka. The deceased Ravi, who is said to have been murdered, is also a native of Sri Lanka.

III. Conspiracy - Part I :
26. The preamble to the charge states that A-1 had misused the belief reposed in him by the disciples and the inmates of the ashram for cheating and for outraqing the modesty of women and also for committing rape on the inmates who had taken shelter in the ashram. Charge No.1 is that A-1 to A-7 have conspired to commit certain illegal acts, and in pursuance of that conspiracy, A-1 committed rape on 13 girls (hereinafter referred to as the victim girls) and A-2 to A-6, as coconspirators, facilitated and aided the commission of rape by A-1 by their overt acts and screened the sexual misdeeds of A-1 to achieve the common design.

27. The attack by the learned counsel for the appellants as against

this charge is that it is unfounded. It is their submission that no particulars like date, month, year and the place of the commission of the offence are specified and the star witness P.W.1, the coconspirator, does not also give the details. The argument further goes on to emphasise that it is highly improbable to accept that these qualified seven persons would stoop to the level of agreeing with such kind of a plan. The court should know that it is not safe to give a finding on the materials furnished.

28. Learned Special Public Prosecutor submitted that no direct evidence can be obtained in such cases. The conspiracy can be inferred from the facts and circumstances established in this case. According to him, the evidence of P.W.1 and P.W.2 who were the co-conspirators is reliable and is corroborated by other prosecution witnesses.

29. The argument on behalf of the counsel that there could not be a conspiracy with such a sinister object of committing rape and that there could not have been a pre-designed plan cannot be accepted. Simply because the accused are qualified and the first accused claims to be a spiritual head, there cannot be a presumption in their favour and improbability in the case of the prosecution. It depends on the evidence and the facts and circumstances of the case.

30. P.W.3, who is the first complainant, who had escaped from the ashram along with P.W.16, gave interviews to the newspaper "The Indian Express" (Ex.P.28 and Ex.29), on the basis of which two articles were published in the Daily on 14.11.1994 and 15.11.1994 under the headings, "Of spiritualism and the flesh" and "Tale of the two who were able to get away", alleging serious misdeeds of A-1 in the ashram. Probably, coming to know of this, D.W.32, the mother of P.W.3 gave a complaint, Ex.P.192 on 15.11.1994 alleging that her daughter, P.W.3 was missing. A crime was registered as Crime No.1181 of 1994 under Section 363 I.P.C. by P.W.60, the Sub Inspector of Police. P.W.61, Inspector of Police went to Madras on 16.11.1994 for investigating the case in Crime No.1181 of 1994 and examined P.W.3, who was at that time, lodged in a social service institution called 'Udavum Karangal'. P.W.3 gave Ex.P.25, the complaint to P.W.61, Inspector of Police disclosing the rape committed on the ashram girls. Thereafter, a case was registered as Crime No.1183 of 1994 under Sections 142 and 376 I.P.C. on 17.11.1994. In the complaint Ex.P.25, P.W.3 has clearly alleged that the fourth accused used to take girls to the room of the first accused. The statement of P.W.3 is supported by the evidence of P.Ws.5, 1 2 and 14. P.W.5 has clearly stated that A-4 was directed to take care as to whether any person is outside the kudil and therefore, A-4 was facilitating and aiding the commission of the rape by A-1. It is the further evidence of the victim girls, especially P.Ws.4, 6 and 16 that A-2 and A-4 to A-7 had been constantly threatening the victim girls that they will meet the same fate as that of Ravi. As a matter of fact, it is in the evidence of P.W.6 that consequent on the rape, when she became pregnant, the responsibility of her pregnancy was shifted to P.W.17 and she was threatened by A-2 and A-4 to A-7. It is their evidence that the third accused, a qualified medical practitioner, became a co-conspirator by administering abortion pills to the victim girls who miss their menstrual periods. She was attending the periodical meetings along with the

co-conspirators to enquire whether any of the girls had missed their regular menstrual periods. A-2 to A-4 were taking active steps for termination of pregnancy whenever their earlier efforts to terminate the pregnancy by providing abortifacient like unriped pine-apple and papayya and also the abortion pills had failed. P.W.4 was taken by P.W.2 and P.W.32 for abortion. Similarly, P.W.13 was taken by A-2 to Thanjavur Hospital for aborting the pregnancy. So also, A-4 took P.W.13 for the same purpose.

30-A. Though the appellants have denied their part in the conspiracy as such, the overt acts attributed to them as clearly spoken to by P.Ws.3 to 16 of specifically threatening the victim girls of dire consequences and administration of abortion agents and taking them to clinics are all clear acts which prove their part in the conspiracy of abetment of rape by the first accused.

31. In Mohd. Usman Mohd. Hussain Maniyar vs. State of Maharashtra [1 981 S.C.C. Crl. 477], the Supreme Court has held that for an offence under Section 120-B I.P.C., the prosecution need not necessarily prove that the perpetrators expressly agreed to or cause to be done the illegal act; the agreement may be proved by necessary implication. In Kehar Singh vs. State [1989 Crl. L.J. 1], the Supreme Court has held that the provisions namely Sections 120-A and 120-B I.P.C. have brought the law of conspiracy of India in line with the law of England by making the overt act unessential when the conspiracy is to commit a punishable offence. After referring to the principles laid down on the subject in English Law, the Supreme Court held that the most important ingredient of the offence of conspiracy is an agreement between two or more persons to do an illegal act. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence on the same. The prosecution will often rely on the evidence and acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence, direct or circumstantial. It is however essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement however need not be proved.

32. In State vs. Nalini [1999 (5) S.C.C. 253], their Lordships of the Supreme Court have summarised the broad principles governing the law of conspiracy. It is held that usually both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused. It was held that what part the conspirator is to play may not be known to every one as also the fact as to when a conspirator has joined the conspiracy and when he left. It was further held that a charge of conspiracy may prejudice the accused because it forces them into a joint trial, and the court may consider the entire mass of evidence against every accused. The prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy, but also of the agreement. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence, the prosecution tries to implicate the accused not only in the consp iracy itself, but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the

precise contribution of each member of the conspiracy, but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. It was held that a man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than merely passive attitude towards an existing conspiracy. But, one who commits an overt act with the knowledge of conspiracy is guilty; and one who tacitly consents to the object of conspiracy and goes along with the other conspirators, actually standing by while the others put the conspiracy into effect, is guilty, though he intends to take no active part in the crime.

33. By going through the evidence, we find that the accused A-2 and A-4 to A-7 have threatened the victim girls not to reveal the act of rape, the abortion and outraging their modesty, with dire consequences. P.W.17 was directed to take up the responsibility for the pregnancy of P.W.6. P.W.16 was threatened not to reveal of her taking poison by A-2 and A-4 to A-7. The third accused, a qualified medical practitioner, was participating in the meetings to verify the missing periods and administer abortion drugs to the victim girls. A-2 and A-4 have taken P.W.4 and P.W.13 for abortion purposes. A-4 had been guarding the room of A-1 while he was committing rape on P.W.5. The above evidence and the facts and circumstances clearly go to show that the accused have acted in pursuance of a criminal conspiracy to commit and facilitate the rape by A-1 on the victim girls.

Conspiracy - Part II :
34. The Charge is that in continuation of their criminal conspiracy to commit rape on the victim girls, A-1, A-2, A-4 to A-7 and approver Ambikanandan, entered into a criminal conspiracy to annihilate one Ravi, one of the inmates of the ashram who threatened to expose the sexual misdeeds of A-1. In furtherance of the said conspiracy, A-1 and A-2 caused bodily injuries to the said Ravi. A-4 to A-7, by their overt acts, facilitated and intentionally aided the commission of murder and they have wrongly confined the said Ravi and starved him to death.

35. The argument of the counsel for the appellants is that all the witnesses spoke after the issue of post-mortem certificate and that they were tailor-made. There was no murmur of the alleged murder for 3 -1/2 years. The persons who are said to have exposed the same have animus against A-1 and the other accused. It is highly improbable that the incident of beating, confinement and burial would have taken place in secrecy in an ashram. Ravi was afflicted by a mental disease and he died out of his self-inflicted injuries.

36. The case of the prosecution is that the fact that Ravi died and he was buried within the ashram is not disputed. The further fact that he was not treated for his alleged mental disease and that he was confined for several days before he was found dead is also not in disputed. The case of the prosecution is that Ravi was murdered only because he was openly shouting against the misdeeds of A-1 and in causing the death of Ravi, the accused have put the fear in the minds of the victim girls. The injuries and the case of death of Ravi as per the medical report is homicide and the failure on the part of the ashram authorities in not reporting about it to the police or the

revenue authorities and informing the parents of Ravi is also a pointer to the guilt of the accused.

37. After considering the evidence of the prosecution witnesses and the defence witnesses, we find that the following facts are not in dispute :

(1) that Ravi died of the injuries suffered by him;
(2) that he death of Ravi was not reported either to the police or to the revenue authorities;
(3) that Ravi was confined in a room after the injuries he sustained without food for several days; and
(4) that the skeletal remains were found to be that of the deceased Ravi.

38. It is the specific case of the prosecution that Ravi was occupying a kudil opposite to the kudil of A-1 and he had the opportunity to watch the misdeeds of A-1 and he started openly shouting against A-1 and consequently, he was done away with. A-1 and the other accused, as per the evidence of P.Ws.3 to 16, were instilling fear in their minds so as not to reveal about the incidents, failing which they would reach the same fate. Just prior to the arrest of A-1, he is said to have convened a meeting and warned the victim girls that he would come back within two days and that they should not reveal anything in the enquiry and if anybody disobeys his orders and reports the facts, they will be put to the same treatment as given to Ravi. The medical evidence clearly show that eleven injuries were found on the skeletal remains of Ravi and that three of them were fractures and could have been caused only prior to his death. After the death, Ravi was taken to the room and confined and locked, while A-2 took the key and the other inmates were warned that nobody should provide water or food to Ravi, clearly indicating the intention of the conspiracy of the accused to starve Ravi to death and to facilitate the commission of the murder of Ravi.

39. Even though evidence was led in on the side of the defence on the mental condition of Ravi and certain other aspects dealing with the murder of Ravi, we will consider the same in detail while the charge of murder is discussed. Suffice it is to say here that the conspiracy Part-II to commit the murder of Ravi has been clearly established.

IV. Misjoinder of Charges :
40. According to the learned senior counsel for the accused, several charges, viz., rape on 13 victim girls, are rolled into one. In every criminal charge, there must necessarily be a formal accusation and the manner of commission of the alleged acts so that the accused is put on notice and the prosecution binds themselves to establish the said accusation. Every rape is a separate incident committed on different occasions and the allegations in reference to the date, time and the place are not common. The charge framed in reference to rape is therefore violative of the provisions dealing with the charges under the Criminal Procedure Code. It is submitted that the failure to frame a specific charge, being an illegality, the question of invoking Section 464 does not arise for consideration. In this context, a number of decisions have been referred to in support of these submissions.

41. According to the learned Special Public Prosecutor, each and every one of the accused had a complete and fair chance of knowing the various allegations when being questioned under Section 313 Cr.P.C. elaborately. They had the benefit of the assistance of leading lawyers from national as well as State level and they were defended ably with all their skills at their command and therefore, it is not correct to say that the accused were not put on notice of the specific allegations. According to him, the accused have understood the charges framed against them and have defended their case with voluminous documentary and oral evidence from their side. It is submitted that the charge having been based on conspiracy, all offences committed in pursuance to the conspiracy become relevant and the evidence and the material documents in this case indicate a clear case of conspiracy in relation to the offences. Learned Special Public Prosecutor specifically refers to the letters which are not disputed and which indicate that the accused A-1 and A-2 are sharing the love of Divya Mathaji, the absconding accused and they clearly show the character of the accused. He further submits that even assuming that the evidence on the character of A-1 is excluded, there are overwhelming materials to establish the case of the prosecution. The prosecution has led in evidence that the victim girls were under the absolute mercy and control of the accused for their food, clothing and shelter, besides under the threat of the accused and therefore, their failure to come out to disclose the commission of the offence by the accused at an earlier stage cannot take away the rigor of the charge. Considering the charge period, the prosecution has given the full particulars of the manner of commission of the crime by A-1 and the participation by the other accused in the same. The charge has to be understood, according to him, in the facts and circumstances under which the victim girls were placed.

42. In K.T.M.S. Mohammed vs. Union of India [1992 S.C. 1831], the Supreme Court held that clubbing of all allegations levelled against all accused and considering them as if all offences were committed in the course of the same transaction pursuant to the conspiracy without support by contents of complaint nor evidence is an illegality. On facts, the said judgment is distinguishable and cannot be of assistance to the accused in this case. That was a case of seizure of currency notes and the charges were under the Income Tax Act as well as Foreign Exchange Regulation Act. In the context of the facts and circumstances of that case, the Supreme Court held that the charges of perjury, conspiracy and evasion of tax are not supported by the complaint or evidence.

42(a) In Kottayya vs. Emperor [A.I.R. (34) 1947 P.C. 67], it was held that when a trial is conducted in a manner different from the one prescribed by the court, the trial is bad. Their lordships also held that if the trial is conducted substantially in the manner prescribed, but some irregularity occurs in the course of such conduct, the irregularity can be cured. On the facts of that case, their Lordships held that no prejudice was occasioned to the accused by the failure to produce in proper times, the handbook of the Police Sub Inspector.

42(b) In Noor Mohammed vs. The King [A.I.R. (36) 1949 P.C. 161], it was held that an evidence is admissible if it is relevant to the issue and the

issue should have been raised in substance. It was further held that the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it was relevant in issue and the said issue should have been raised in substance.

42(c) A Full Bench of the Bombay High Court, in D.K. Chandra vs. State [A.I.R. 1952 Bombay 177], has held that it is a well known canon of construction that exceptions must be strictly construed, and unless the prosecution satisfies the court that the exception has been strictly complied with, the joinder of charges in a trial must be held to be contrary to law. In that case, the Government Pleader conceded that the transactions are separate and distinct and therefore, the court concluded that it cannot be said that the offences in that case arise out of the same transaction. In this case, the accused are charged under Section 120-B I.P.C. And they have committed the offences against the victim girls in the course of the conspiracy to commit the offence.

42(d) In Ranchhod Lal vs. State of M.P. [A.I.R. 1965 S.C. 1248], the Supreme Court held that the court is authorised to lump up various items with respect of each criminal breach of trust so committed and to mention the total amount misappropriated within a year of the charge. When so done, the charge is deemed to be the charge of one offence. When offences have been committed in the course of the same transaction, separate trial of the accused for certain specific offences is not illegal.

42(e) In a recent judgment dated 4.10.2002 in State of Punjab vs. Rajesh Syed in Criminal Appeal No.1037 of 2002, the Supreme Court has held that when different people have alleged to have been defrauded by the respondent company, each offence is a distinct one and cannot be regarded as constituting a single series of acts/transactions.

43. In reply to the argument on misjoinder of charges, the learned Special Public Prosecutor submitted that the character and behaviour of the accused, including their propensity to commit the crime of rape and the methodology adopted like torture are relevant in the facts and circumstances of this case. The tortures meted out to the victim girls like having the girls on night watch, beating them, keeping the girls in the kennel, tying the girls to a cow are sample events pointed out, which sufficiently form a reasonable ground relevant to the issue and therefore, the admission of the evidence on this aspect is not illegal, but is necessary. Evidence on this aspect has become all the more relevant especially when the defence has led in evidence to tarnish the image of the victim girls and to picturise the accused, specifically A-1 as the spiritual guru and an embodiment of all virtues. Hence, the prosecution has justifiably attempted to demolish this image by letting in evidence on the character, the previous conduct and the state of mind of the accused.

44. The prosecution relied on the following judgments in reference to the joinder of charges.

44(a) In Willib (William) Slaney vs. State of M.P. [A.I.R. 1956 Madras Weekly Notes 391], the Constitution Bench of the Supreme Court held

that in the generality of cases, omission to frame a charge is not per se fatal, prejudice or no prejudice. Their Lordships held that there is no magic or charm in the ritual of a charge. It is the substance of these provisions that count and not their outward form. To hold otherwise is only to provide avenues to escape for the guilty and afford no protection to the innocent. Their Lordships held as follows :-

"We agree that a man must know what offence he is being tried for and that he must be told in clear and unambiguous terms that it must all be explained to him, so that he really understands (Section 271(1) in Sessions Cases and Section 255(1) in Warrant Cases), but to say that a technical jargon of words whose significance no man not trained to the law can grasp or follow affords him greater protection or assistance than the informing and explaining that are the substance of the matter, is to base on fanciful theory wholly diverse from practical reality."

.....

"The essence of the matter is not a technical formula of words, but the reality. Was he told? Was it explained to him? Did he understand? Was it done in a fair way?" (emphasis added).

The Supreme Court, in that judgment, further held that the Code is emphatic that whatever the irregularity, it is not to be regarded as fatal unless there is prejudice. It is the substance that we must seek. Courts have to administer justice and justice includes the punishment of guilty just as much as the protection of innocents. Neither can be done if the shadow is mistaken for the substance and the goal is lost in the labyrinth of insubstantial technicalities. It was held that except where there is something so vital as to cut at the root of the jurisdiction or so abhorrent to what one might term natural justice, the matter resolves itself to a question of prejudice. Some violations of the court will be so obvious that they will speak for themselves as, for example, refusal to give the accused a hearing, refusal to allow him to defend himself, refusal to explain the nature of the charges to him and so forth. Other violations will not be so obvious and it may not be possible to say that having regard to all that occurred, no prejudice was occasioned or that there was no reasonable probability or prejudice. In still another class of case, the matter may be so near the border line that very slight evidence of reasonable possibility of prejudice would swing the balance in favour of the accused. The real question is not whether a matter is expressed positively or is stated in a negative term, but what disregard of a particular term amounts to substantial denial of a trial as contemplated by the court and understood by the comprehensive expression of natural justice. Applying the said principle, we do not find that the accused have suffered any prejudice in the joinder of charges and trial. As a matter of fact, it has benefited them without there being a separate trial for each case of rape. As rightly pointed out, the accused was extensively questioned and he had been answering, filing defence statements and letting in equal number of defence witnesses and documents. It is difficult to accept the case of the accused that they were not put on notice on each and every individual case of rape committed by A-1. The Supreme Court, in State vs. Nalini [1999 (5) S.C.C. 253], referred to above, has held that a charge of conspiracy may prejudice the accused because it forces them into a joint trial, but the court will have to consider the

entire mass of evidence against every accused.

44(b) In Major E.G. Barsay vs. State of Bombay [A.I.R. 1961 S.C. 176 2], the Supreme Court held that where the accused are charged with having conspired to do three categories of illegal acts, the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevance in considering the question whether the offence of conspiracy has been committed. They can all be held to be guilty of conspiracy to do individual acts, though for individual offences, all of them may not be liable. In Om Prakash vs. State of Punjab [A.I.R. 1961 S.C. 1782], the Supreme Court held that different clauses under Section 239 (223) Cr.P.C. are not mutually exclusive, but can be availed cumulatively.

44(c) In State of A.P. vs. Ganeshwar Rao [A.I.R. 1963 S.C. 1850], it was held that on a plain construction of the provisions of Section 2 23 Cr.P.C. (new Section 213), it is open to the court to avail itself cumulatively of all the provisions of the different clauses for the purpose of framing charges and the charges so framed by it will not be violation of the law. The object of enacting Section 239 (new Section 223) is to avoid multiplicity of trial and the only limitation which could be placed on the trial of several persons for the same kind of different offences would be that which consideration of justice and fairness would require. A conspiracy must be regarded as one transaction and therefore, the single individual charge with it could be tried for all the acts committed by him in furtherance or in pursuance to the conspiracy with the limitation. Since all acts are referable to the same conspiracy, their connection with one another is obvious. In Bhoor Singh vs. State of Punjab [1974 S.C.C. (Crl.) 664], their Lordships of the Supreme Court held that the Code does not use the word illegality or defines irregularity and the illegality can only mean an incurable illegality because of prejudice leading to failure of justice. If therefore the necessary information is conveyed to the accused in other words, there is no prejudice and the trial is not invalidated with the mere fact that the charge was not formally reduced in writing. An essential part of the law is not any technical formula of words, but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for. When the appellants are fully aware of the matter with which they were charged, no question of prejudice would arise.

44(d) In Kalpanath Rai vs. State [1998 S.C.C. (Crl.) 134], the Supreme Court held that the prosecution is not vitiated unless there is a failure of justice and merely because the defence raised this objection at the earliest opportunity, it is not sufficient to vitiate the trial.

44(e) In State of A.P. vs. Thakkidiram Reddy [1998 Crl. L.J. 4035], the Supreme Court held that the trial is not vitiated by mere errors in charges, while construing Section 464 Cr.P.C. It was held that the Criminal Procedure Code, inter alia, provides that in determining whether any error, illegality or irregularity in the framing of charge has occasioned failure of justice, the court shall have regard to the fact that the objection should have been raised at an earlier stage in the proceedings. In that case, it was found that the accused persons were specifically told of their having committed the offence and their contentions rejected at the threshold and the

accused were not in any way prejudiced due to the error and omission in the charges pointed out.

45. As rightly pointed out, the prosecution has led in cogent and convincing evidence against each one of the accused charged with the offence of conspiracy and no prejudice has occasioned while admitting the evidence in implicating the accused not only in the conspiracy itself, but also in the substantive crime of the alleged conspirators. In the light of the evidence led in by the prosecution in reference to motive, preparation and previous or subsequent conduct, the facts showing the existence of the state of mind are relevant as per Section 8 as well as Section 14 of the Indian Evidence Act. The correspondence A-2 had with Divya Mathaji, the absconding accused show the unholy sexual relationship that exists between her and A-2 and also indicates that A-1 and A-2 are rivals in sharing the love of Divya Mathaji. The prosecution evidence would show that in order to instill mortal and mental fear in the minds of the victim girls, the accused have subjected the girls to torture, threat, wrongful confinement and starvation, which are all relevant. The contention that by leading such evidence and combining the trial of 13 rapes, there is a legal prejudice and the court has become biased against the accused has no substance. In the light of the evidence led in by the prosecution and the defence witness repudiating each one of the allegations against the accused, the character of the accused has become an issue and therefore, the defence cannot contend that they were inadmissible in evidence and went beyond the charge. The charge of rape of 13 girls and the murder of Ravi are facilitated and committed in a concerted manner and the evidence led in by the prosecution has relevance to the charge against the accused.
46. In Major E.G. Barsay vs. State of Bombay [A.I.R. 1961 S.C. 1762] referred earlier, it was held that it is not an ingredient of the offence under Section 120-A I.P.C. that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Where the accused are charged with having conspired to do three categories of illegal acts, the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They can all be held to be guilty of having committed the offence of conspiracy to do the illegal acts, though for individual offences, all of them may not be liable.

47. The Court of Appeals, in 1989 Criminal Appeal Reports 1-131 Part-1 at Page 32, has considered the question whether there should have been a separate trial on a charge of sexual offences against girl pupils at a school when he was the headmaster and which were alleged to have fallen into three separate categories. The defence of the accused was that his conduct towards the girls was affectionate and paternal, but in no sense indecent. The prosecution evidence related to incidents involving four complainants, to other incidents falling within the same three categories as the counts in the indictment and to other incidents of familiarity with pupils. The appellant was convicted by the trial court and the appeal was on the ground, inter alia, that there should have been separate trials of the categories of offence and that in any event, evidence of conduct was : (a) not strikingly similar or was a different form of indecency; or (b) was not indecent at all, but merely familiar should have been excluded. The Court of Appeals, while dismissing

the appeal, held that since the issue was whether or not the appellant's conduct towards the girl pupils over a number of years was indecent, the trial judge was right in refusing to order separate trials. The appellant's conduct in relation to each of the three categories of offence was relevant for consideration of his conduct in relation to other categories. In the circumstances of the case, the evidence could not sensibly be divided into compartments and the other evidence of familiarity was, therefore, also admissible. Further, in the particular circumstances of the case, there was no error in law by the judge in admitting the similar fact effect of evidence. (emphasis added)

48. A Division Bench of the Nagpur High Court, in Kashiram vs. Emperor [1923 Nagpur 248], while considering the provisions of Sections 14 and 15 of the Indian Evidence Act, has held that the evidence of similar acts of the accused in regard to the other persons is not admissible. The Division Bench also held that before the evidence of an accomplice can be accepted, it is necessary to be satisfied that the accomplice himself took part in the crime to the extent that he says that he is in a position to give true evidence as to what occurred. It was held that in that case, there is ample corroboration on the story that he was present at the scene of crime and saw exactly what happened and that his story does not read like a concoction, but like a description of something that really happened. In that case, stones bearing traces of silver were found on the spot, rope was also found on the spot which corroborated the story that the boy's leg had been tied together and the rope was used in pulling apart the kadas that had been partially cut through with the head of an axe. It is also of course necessary that the evidence of an accomplice should be corroborated to prove that it was the accused person and no one else who committed the crime. However, in that case, it was held that the evidence of the boys is relevant to prove another point namely that Kashiram and Mullu were in the habit of frequenting the grazing ground in company.

49. For all these reasons, we do not find any merit in the contention as to the misjoinder of charges.

V. Rape on 13 Girls :

50. The second charge relates to the comission of sexual abuse, threat and deceptive practice and thereby committing rape on the 13 victim girls against their will and consent on 14 counts during the period 1990-1994. The third charge relates to the intentional aiding and abetting or the rape by A-1 on the victim girls in pursuance to the conspiracy during the said period and place.

51. The prosecution has led in direct as well as circumstantial evidence in support of this charge of rape in the form of the evidence of the victim girls as well as other evidence. Excepting two girls namely P.W.4 and P.W.6, all other girls are of Sri Lankan origin. They were admitted in the ashram at their tender age of 2 or 3 and left in custody of A-1, as most of them had no families of their own. The ashram had provided them with food, shelter and clothing and other basic necessities. Having come over to India through illegal means by boat without proper travel documents, the girls were

wholly dependent on the first accused for their residence within the campus. The survival and livelihood of the victim girls was completely under the control of A-1. It is P.W.3 who, not being able to tolerate the continuous harassment, went out of the ashram earlier in the year 1991, but was sent back within two days to the same ashram and she was able to come out again in the year 1994 and this time, with a plan to expose the misdeeds of A-1 and the suffering of other girls to the outside world and also to save many other girls from the continuous torture at the hands of A-1, and with the timely help of "The Indian Express", for the first time, the other side of the story was published. On the same day, a criminal complaint of missing and abduction of P.W.3 was filed, a crime was registered and P.W.3 was enquired. The speed with which the mother of P.W.3, who was residing in the ashram, lodged the complaint upon receipt of the paper news, shows the anxiety of the accused to see to it that no more information comes out. However, P.W.3 was able to give a complaint, Ex.P.25 which has sparked the investigation, resulting in the forming of an investigation team and enquiry of the victim girls and the accused. It is also in evidence that prior to the arrest of A-1, a meeting was convened by A-1 in anticipation of a possible enquiry of the girls, in which he is specifically said to have warned the girls of dire consequences if they reveal anything about the acts committed on them and he was confident to tell them that he will be able to come out of custody in two days and if he found any leak of information, he would see to it that they receive the same fate as the deceased Ravi. The prosecution, without fully knowing this background, has been going through the investigation in a routine manner by taking the girls to the General Hospital and then to the Women Police Station for enquiry and thereafter to obtain their statements under Section 164 Cr.P.C. before the Magistrate. It is now in evidence that the girls were under the complete spell of the accused during this relevant period and only after the continuous custody of A-1 without any possibility of tampering of the victim girls, they having been in a safe custody at Madras in an institution called 'Udavum Karangal', they were able to come out with the full evidence of the true story. The apparent 'conflict or improvement' in their version has to be understood in the light of this factual background and the circumstances under which these girls were placed at that time.

52. Before elaborating and discussing the evidence of the prosecution as well as the defence, it is necessary for us to consider the evidence of the victim girls, their corresponding Sec.164 Cr.P.C. statements and the contra defence witness in reference to them.

53. A comparative chart as to the particulars of the victim girls will help us to have a better appreciation of their evidence.

[A] Summary - Table :

Name, Age & Rank	Relatives in the Ashram	Instances of rape committed and the period	Instances of abortion	Statement made u/s.161(3) and 164 Cr.P.C.

Sureshkumari |Sister of |1) 1985 before | Nil |Ex.P25 refers to
20/1994 |PW7-Selva |attaining puberty| |the instances of
P.W.3 |-kumari @ |at residential | |rape
committed
Sri Lankan |Manjula, |house at | |on her by A1.
PW8-Suguna	Crapatti, Tiruchy	
-kumari @	2) July 1987 in	
Sudha,	A1's room.	
PW10-Sasi	3) July 1987 in	
-kumari @	A1's room.	
Jaya and	4) November 1991	
daughter	in A1's bedroom	
of DW32-	at 1 pm.	
Deivanai		

Nallammal | - |1) May '94 at |Abortion |Ex.P27(Accident
21/1994 | |11.30 am in the |conducted |Register) :
P.W.4 | |Arulvakku Room. |by Dr.Muth |Contact with
Native of | |2) May '94 at |-lakshmi |known person
Pallathu- | |12.30 pm in |some time |willingly; milk
patty, | |A1's room. |in Oct.'94 |secretion
Keeranur, | |3) May '94 at |PW2-Nesan |present-complete
Tamil Nadu. | |2.30 pm at |was asked |abortion.
| |Dharmasala. |to bear |Ex.D1(u/s.164):
| |4) May '94 at |respon- |Admits sexual
| |Dharmasala. |sibility |intercourse
| | |for the |with A1 and
| | |conception |money
given by
| | | |A1
for abortion
---|---|---|---|---
Princy |Sister of |1) 1986 at lodge |Missed her |Ex.P36(Accident
20/1994 |PW2-Nesan |in Courtallam at |periods |Register) :
P.W.5 |and PW18- |1 pm. |2-3 times; | Coitus with
Sri Lankan |Dinesh |2) July '90, |aborted by |with working
| |days after Guru|taking the |person willingly
| | Purnima pooja at |abortifac- |-Hymen not
| |11 pm in A1's |ients given|intact.
| |room. |by A-3. |Ex.D2(u/s.164):
| |3) 1992, a month | |Refers to
A1's
| |after the 3rd | |name and four
| |incident at 5 am.| |instances of
| |4) 1993 in lodge | |rape
commencing
| |at Thanjavur. | |from 1992.
| |5) On 17.4.1994. | |

---|---|---|---|---
Mary | - |1) 1993 in the |Missed her |Ex.P35(Accident
16/1994 | |Pomegranate |period |Register) :
P.W.6 | |Garden. |once and |Shows
Hymen not
Native of | |2) 4 days there- |abortific- |intact; as per
Venniyaru | |after at the |ants given |her statement &
Estate, | |Dharmasala. |by A3 and |physical exami-
Madurai. | | |Divya Devi.|nation,
age 16
| | |
|years; As per
| | |
|Ex.P46, Age
| | |
|Certificate,
| | |
|completed 16
| | |years
on 2.11.94
| | |
|Ex.D3(u/s.164):
| | |
|Refers to sexual
| | |
|intercourse by
| | |force
by A1 at
| | |the
age of 13 in
| | |the
room near
| | |
|Dharmasala at
| | |1.30
pm, immed-
| | |
|iately after
| | |
|Christmas.
---|---|---|---
Selvakumari |Elder | 1) May '94 in | Nil |Ex.P37 (Accident
@ Manjula |sister of | A1's room. | |Register) :

22/1994 |PW3&sister | 2) October '94 | |Hymen-not
P.W.7 |of PWs.8&10| at 4 pm in | |intact.
Sri Lankan |related to | A1's room. |
|Ex.D4(u/s.164):
|A1 as their| 3) Refers to | |Refers to
sexual

|father's | forced perverted | |intercourse with
|brother. | oral sex by A1. | |A1 willingly
| | | |once.

----------|----------|------------------|---------|----------Sugunakumari
| - | 1) In 1993, 2-3 | Nil |Ex.P37 (Accident
@ Sudha | | months after she | |Register) :
16/1994 | | attained puberty | |Not a virgin-
P.W.8 | | A1 had sexual | |accustomed to
Sri Lankan | | intercourse in | |sexual inter-
| | his room. | |course.
| | 2) September '94 | |As per
Ex.P48,
| | in the Arulvakku | |Age
Certificate,
| | Room. | |Completed 18
| | 3) September '94 | |years as on
| | in the Arulvakku| | |22.11.94.
| | Room. |
|Ex.D5(u/s.164):
| | |
|Refers to sexual
| | |
|intercourse by
| | | |A1
forcibly.
----------|----------|------------------|---------|----------
Pushparani |Sister of | 1) 1992 at 1.30 am| Nil |Ex.P33 (
Accident
16/1994 |PW17. | in the pooja room.| |Register) :
P.W.9 | | 2) 1994 at 11.30am| |Had affair
with
Sri Lankan | | in Dharmasala room| |a working
person | | 3) In 1994, 2 days| |for 1 year; as
| | prior to Deepavali| |per her own
| | in A1's room. | |Statement and
| | |
|physical exami-
| | |
|nation, aged 16.
| | | |As
per Ex.P49,
| | | |not
completed
| | | |16
years.
| | | |Statement (u/s.
| | | |164):
Refers to
| | |
|forcible sexual | | |

|intercourse by
| | | |A1
when she was
| | | |14
years old.
---|---|---|---|---
Sasikumari |Twin sister| 1) In 1993, 15 | Nil |Ex.P37 (Accident
@ Jaya |of PW8 & | days after she | |Register) :
16/1994 |younger | attained puberty | |Hymen - not
P.W.10 |sister of | in A1's room. | |intact. As per
|Pws.3 & 7. | | |her own
state-
| | | |ment
& physical
| | |
|examination, she
| | | |is 16
years old.
| | | |As
per Ex.P50,
| | | |Age
Certificate,
| | | |she
has not
| | |
|completed 16
| | | |years
as on

| | |
|22.11.94.
| | |
|Ex.D6(u/s.164):
| | |
|Refers sexual
| | |
|intercourse with
| | | |a
known person.
---|---|---|---|---
Shantha |Sister of |1) November '91,| Nil |Ex.P39 (Accident
34/1994 |PW13- |first sexual | |Register) :
P.W.11 |Vanitha |intercourse by | |Sexual contact
Sri Lankan | |A1 who made her | |with known
male
| |to agree @ 4 pm | |person.
Hymen-
| |-Arulvakku room | |not intact.
| |2) Nov.'92 in |
|Ex.D7(u/s.164):

| |Visitors' Room | |Refers to
sexual
| |against her wish| |intercourse
with
| |3) November '93 | |A1 on consent
in
| |in Divya Devi's | |1991; without
| |room against her| |consent in
1992;
| |wish. | |without
consent
| | | |in 1993.
---|---|---|---|---
Udayakumari |Sister of |May 1993- | Nil |Ex.P40 (Accident
21/1994 |PW15-Malliga|forcible inter- | |Register) :
P.W.12 |-devi & |course by A1 in | |Hymen-not
Sri Lankan |DW29- |the garden; | |intact; |
Kanthan. |Refers to the | |accustomed to
| |torture meted | |sexual inter-
| |out to her by | |course.
| |confining her | |No statement
| |in the dog's | |u/s.164 Cr.P.C.
| |kennel. | |recorded.
---|---|---|---|---
Vanitha |Younger |1) June '91 |1st one |Ex.P57 (Accident
21/1994 |sister of |while sleeping |at Dr. |Register) :
P.W.13 |PW11-Shantha|in A1's |Gomathi's |Contact with a
Sri Lankan | |Kudil. |Hospital @ |known person for
| |2) July '92 |Thanjavur. |more than four
| |Saturday at 3 pm|2nd one at |years. Last
| |in A1's bedroom.|Athi |abortion 2 years
| |3) October '94 |Hospital. |back at
Tanjore.
| |at 11 am in A1s |Speaks of |MTP done twice.
| |room. |2 forcible |Statement
| | |sexual |u/s.164
Cr.P.C.
| | |intercourse| refers
sexual
| | |even as she|contact
with
| | |informed |A1 twice
and
| | |A1 that
|abortion twice.
		doctor had
		told her
		that her
		uterus was
| | |very weak. |
---|---|---|---|---

Aruljothi | - |1) 1991 in A1's |1) Aborti- |Ex.D9 (Accident
21/1994 | |room at 1 pm. |facients |Register) :
P.W.14 | |2) One month |given by |Contact with

Sri Lankan | |thereafter, A1 |Divya Devi |a known person
| |had forcible |& A3 in |for 5 years.
| |sexual inter- |1991. |Ex.D10(u/s.164): |
|course in A1's |2) Second |1) Refers to 's
| |room even while |abortion at|forcible sexual
| |she was bleeding|A3's |intercourse by
| |after taking |instance |A1, 2 months
| |abortifacients. |by taking |after attaining
| |3) On 14.11.94 |tablets. |puberty.
| |in A1's room. | |2) Second
sexual
| | | |intercourse
in
| | | |A1's room.
| | |
|Missed her
| | |
|period and took
| | |
|abortifacients.
| | | |Next
day, after
| | |
|publication of
| | | |news,
refers to
| | | |the
forcible
| | |
|sexual inter-
| | |
|course by A1 and
| | |
|refers to the
| | |
|conception and
| | | |her
request for
| | |
|termination of
| | |
|pregnancy.
---|---|---|---|---
Malligadevi |Sister of |1) April '92 at | Nil |Ex.P32 (Accident
20/1994 |PW12-Udaya |2 pm in A1s room| |Register) :
P.W.15 |-kumari & |2) On 18.11.94. | |Hymen-not

Sri Lankan |DW29-Kanthan | | |intact.
| | |
|Ex.P133(u/s164): | | |
|Refers to the
| | |
|forcible sexual
| | |
|intercourse by
| | | |A1
after she
| | |
|attained puberty
| | | |by
persuading
| | | |her
that she
| | | |would
be cured
| | | |of
asthma in
| | | |A1's
room.
---|---|---|---|---
Krishnaveni | - |1) January '94 | Nil |Not included
23/1994 | |at 3 pm in the | |in the charge.
P.W.55 | |room of PW55. | |
Sri Lankan | |2) August '94 at| |
	12 noon in A1's	
	room.	
	3) September '94	
	at night watch	
	in A1's room.	
	On her refusal	
	the first time,	
	she was tied to	
	calf made to run	

---
	along with it &	
	tortured for her	
	adamancy.	
---|---|---Latha
-	Not raped by A1, but speaks about the rape
30/1994 | |of Sureshkumari, PW3 by A1 1987 and
P.W.16 | |Vanitha, PW13 in June, 1991.
==========
==========

From the statements of the victim girls made under Section 164 Cr.P. C. as summarised above, it is seen that :
(a) P.Ws.3, 4, 5, 6, 8, 9, 11, 13, 14 and 15 have named A-1 and his

forcible rape on them;
(b) P.Ws.7 and 11 (once) have stated to have consented for sexual intercourse with A-1; and
(c) P.W.10 has admitted forcible rape by a known person;
In their evidence before the court, all of them, except P.W.13, have deposed clearly as to the rape committed on them by A-1. The evidence of the victim girls are discussed below.

[B] Discussion on the evidence of victim girls :

54. P.W.3-Sureshkumari; Age-20/94; Mother's Name-Deivanai (D.W.32); Date of Examination-1.7.1996.

54(a) She was born at Mathalai, Sri Lanka on 20.1.1974. Her father died while she was six years old in the ethnic conflict. She, along with her three sisters namely P.W.7, P.W.8 and P.W.10, were left at the ashram at Mathalai conducted by A-1 in the name of Boopalakrishna Ashram. After A-1 left for India in the year 1983, P.W.3, along with 12 other girls, left Sri Lanka through a boat from Yazhppanam and arrived at Rameswaram. The first accused took them through a van from Rameswaram to a house at Crapatti, Tiruchy. At that time, she was aged 11 - 12 years and had not attained puberty. She had deposed that even during that time, A-1 used to call her to his room, made her to sit on his lap and used to kiss her and give sweets thereafter. This happened three times during 1985. On the fourth occasion, A-1 called her to a separate room, removed her dress and squeezed her breasts hard, to the pain of P.W.3. Thereafter, he pushed her on the bed and tried to have sexual intercourse forcibly. Inspite of the plea of P.W.3 that she was put to pain, A-1 did not bother. They had shifted their residence from the Crapatti house to the present Fathima Nagar Ashram. She attained puberty in the year 1987. She was confined to a room for nearly one month during this period. After completion of one month, A-1 called her to his room on the pretext of giving viboothi (sacred ash). That was in July, 1987. Inside the room, A-1 made her to sit on his lap, embraced her and after kissing, asked her consent for sexual intercourse. When P.W.3 asked him as to how he could do that when he was wearing saffron robes, A-1 had pacified her by stating that robe is different and sex is different and further said that since he is like her father, she would not beget any children even if he had sexual intercourse with her. However, P.W.3 managed to open the doors and came away running, haunted by the incident. At that time, P.W.16 was standing outside. When A-1 had asked P.W.16 whether she over-heard what they were talking, P.W.16 replied affirmatively. Then, A-1 went back without saying a word. In the same month, three days thereafter, at about 1.30 pm, while P.W.3 was standing outside, A-1 signed her to come. When P.W.3 went inside his room, A-1 locked the doors. When P.W.3 asked him why the doors were to be closed, the reply of A-1 was that he had to discuss something which could be done only after closing the doors. Thereafter, P.W.3 was taken to his bedroom, and inside his bedroom, inspite of her attempt to escape, A-1 removed her dress and when she resisted, A-1 slapped her and pushed her over the bed. When she shouted, A-1 closed her mouth, mounted on her and started squeezing on her breasts. However much she shouted till she lasted her energy, A-1 had sexual intercourse with her forcibly. Consequent on this, P.W.3 had discharge of

blood and fever. According to her, including this incident which occurred in the year 1987, A-1 has committed rape on her on three different occasions.

54(b) She was living with her room mate P.W.14, Aruljothi and on one occasion in the year 1988, when they returned after Krishna Jayanthi celebrations at about 5.30 am, A-1 came to their room and even without bothering that she was sleeping nearby, forcibly committed rape of Aruljothi, P.W.14, inspite of her cries. According to P.W.3, she saw A-1 committing rape of Aruljothi. She also says that in the year 1 989, when the ashram was ceremoniously opened, she had informed P.W.1 3 about A-1 and requested her to leave the ashram. However, the information reached A-1, consequent on which P.W.3 was beaten. Similarly, during the year 1991, when they were taken to Courtallam, A-1 was sleeping along with them. At about 1 am midnight, A-1 had sexual intercourse with P.W.5 inspite of her crying, even without bothering to see that others were

sleeping in the same room. During the year 1991, P.W.13 was kept inside the room of A-1 for nearly a month on the plea that she was having problem of urinating. P.W.3 also says that when P.W.12, Udayakumari refused to concede to the sexual desire of A-1, she was kept inside the dog kennel for three days without food and water. In the year 1 992, when P.W.5, Krishnaveni refused to concede to the sexual demand of A-1, she was tied to a calf, beaten and asked to run along with the calf. In the year 1992, at noon, when all of them were taking food, A-1 came and beat P.W.14 on the allegation that she was wasting the food, consequent on which she suffered eye injuries. As P.W.3 heard of so many tortures happening inside the ashram, she left the ashram in the year 1991 to Madras. However, two police constables caught and sent her back to the ashram. Coming to know of this, A-1 beat and tortured her in innumerable ways. She says that A-1 used to convene meetings and used to talk about sex and if anybody goes out of the meeting, they would be called and beaten. Even though there were many boys in the ashram, only girls were asked to do night watch by A-1. During this night watch, A-4 would be sent by A-1 to fetch whichever girl he likes. According to her, she had seen P.W.9, P.W.5, P. W.14, P.W.8 and Naveena being taken to the room of A-1.

54(c) Every girl has to inform Divya Mathaji, the absconding accused whether they were getting their regular

menstrual periods. If the girls miss their period once or twice, Divya Mathaji used to give them unriped pine-apple and papayya and also drugs and tablets for getting the periods.

54(d) P.W.3 went on to state that at about 1 pm in November 1991, A-1 forced her to have sex with him inspite of her refusal to concede to his demand. She says that since they were orphans and that there was nobody else to take care of them, inspite of A-1 committing forcible sexual intercourse, she did not disclose this to anybody. Besides, A-1 had warned them not to reveal this to anybody, failing which they will be beaten. In October 1994, when P.W.9 refused to concede to the demand of A-1 during night, on the next

day, when the meeting was convened, she was denuded and her dress removed on the allegation that she was talking with one boy by name Amara Kumar and therefore A-1 punished her by pushing his big toe in the vagina of P.W.9. A-1 was enjoying the cries of P.W.9. Unable to see this torture, when P. W.3 went out of the meeting, she was called and slapped in front of others. P.W.3, not able to bear such torturous conduct of A-1, came out of the ashram on 31.10.1994.

54(e) P.W.3 was cross-examined on behalf of the first accused on 1.7.1996 and again, she was recalled and examined on 31.7.1996. It was suggested that no such incident as alleged by P.W.3 took place and that out of her enmity

towards A-1, P.W.3 was uttering falsehood. She has admitted that after the forcible sexual intercourse by A-1 in the year 1991, there was no further forcible sexual intercourse by A-1. She has admitted that she had tape-recorded the statements of the victim girls so that people believe what was happening inside the ashram. She withstood her lengthy and strenuous cross-examination. She had denied the suggestions that she knew that P.W.30 was ordered to leave the ashram by A-1 ; that Krishnaveni did not say that she had sexual relationship with Anandan, the brother of P.W.9; that she sought the help of A-1 for joining the tenth standard; that A-1 and Mathaji had occasions to reprimand her; that P.W.1 and P.W.13 had developed enmity with A-1 and she was caught in their illegal scheme; that in order to get compensation from the Government, she had been acting at the behest of P.W.1 and P.W.30; that they have planned to create a bad impression about the accused; that she was used as an instrument for advertisement; that A-1 had no connection with the assignment of work in the ashram; and that the ashram was under the supervision of police. She specifically denied the suggestion that she did not know the habit of A-1 to take girls who attain puberty and keep them in his room for a whole night.

54(f) P.W.3 had admitted that Divya Mathaji is incharge of looking after the administration of the ashram; similarly, A-2, A-4 and A-5 were assigned specific jobs. P.W.3 had admitted that she gave interviews to "The Hindu" newspaper and that she had made a general statement about the illegalities being committed at the ashram. She has not stated about her interviews in Ex.P.25, her complaint to the police. She had informed her mother about the conditions of other girls, but not about herself. She states that she did not disclose the supply of drugs and tablets by A-3 in Ex.P.25, complaint and that she forgot to mention the same; that she has not mentioned about the torture of Udayakumari in Ex.P.25, even though the people at the ashram and Divya Mathaji knew about it; and that she did not mention about Krishnaveni being tied to the calf and made to run in Ex.P.25. She has admitted that after the rape committed by A-1, she went and lied down in her room without informing about it or even talking to anybody. She has further admitted that when she left the ashram in the year 1991, she was outside for 1-1/2 days, but did not inform anybody about the rape incident and that she did not plan to meet anybody at that time, though she had an inclination to tell everything to somebody. She admitted that she had told the police that in the year 1991, since she did not like to live in the ashram, she left the

ashram. But, out of the fear of A-1, she did not disclose the occurrence in the ashram to the police constables who caught her and they threatened her and put her in a bus and sent her back to the ashram. She has admitted that she did not inform the police that one month after the girls attain puberty, they will be called by A-1 in the guise of offering viboothi and kept inside the room of A-1 for the whole night and they will be sent back only by 4 am and also that she did not see herself of P.W.8 being taken to the room of A-1 and she was telling about Pushaparani's incident of the year 1993 to the police for the first time.

54(g) In the cross-examination, P.W.3 had reiterated that she had recorded the statement of five girls namely P.Ws.8, 6, 15 and 9 without their knowing about the same, for the purpose of disclosing it to the outside world and to have it as a proof for the same. She says that Krishnaveni, P.W.55 had told her that she must say that she was in love with Anandan and that she had given the recorded cassette to the police on 17.11.1994. She had reiterated the incident of taking her to Thanjavur along with Vanitha, P.W.13, the confinement of Udayakumari, P.W.12 in the dog kennel and the tying of Krishnaveni to the calf, but admitted that there were not told by her before the police. She has denied the night watch by men. She had reiterated the sexual intercourse of A-1 with her even before her attaining puberty and that it was during a day time and in the room upstairs in that rented building and that it was in the year 1985 and was in the bedroom of A-1. She has also stated that at that time, there was no bleeding, though she had pain and the forcible sexual intercourse committed by A-1 in the years 1985, 1987 and 1988 were revealed for the first time in the year 1994 before the Reporter of "The Indian Express" and before P.W.1. She had decided to disclose the rape committed in the ashram while she left the ashram for the first time and on her own and she did not plan it with others and she only wanted some assistance for the disclosure. She had stated that P.W.8, her sister had told her that A-1 raped her one month after her attaining puberty.

54(h) The evidence of P.W.3 as to the 1987 incident was corroborated by P.W.16. P.W.16 had admitted the compulsion made by A-1 against P.W.3. She admitted that she had vivid memory of what happened to P.W.3 while she was standing outside the room of A-1 and that she did not reveal these things to the police because of the warning by A-1. She says that in the year 1987, she was doing gardening work when A-1 took P.W.3. At that time, she did not suspect A-1, but after the crying sound of P.W.3, she over-heard the conversation between A.1 and P.W.3. She had admitted that because of the forceful sexual act on P.W.3 by A-1, she lost her respect for A-1, but however, she could not tell these things outside because she was an orphan and as she could not go out of the ashram. She also says that there was nobody else with whom she could confide in the ashram. She also says that she had seen the sexual intercourse by A-1 with Divya Mathaji. The evidence of P.W.3 is natural and trustworthy.

54(i) Evidence is led in on behalf of the accused in painting P.W.3 as an untrustworthy, promiscuous girl. D.W.14 claims to have been in the ashram from the age of four. His evidence is full of stories which are totally improbable. According to him, he was having a love affair with P.W.3 and was

having sexual intercourse contrary to the rules and regulations of the ashram in his own room. He says that he used to have sexual intercourse with P.W.3 ten times a month and admits that he would have had sexual intercourse with P.W.3, 200 times. He further says that after leaving him, P.W.3 started loving one Nesan for the purpose of getting her transfer certificate. He portrays P.W.3 as having a very bad character. Acording to him, P.W.3 had asked him to get non-vegetarian food from outside, contrary to the regulations of the ashram and because of that, she left the ashram in the year 1991. When she came back after 10 - 15 days, she had informed him that she went to enjoy the life outside like seeing films, etc. He also says that she ran away from the ashram once more in the year 199 3. According to him, since she was having relationship with Nesan, he consumed poison. He further admits that he started having sexual intercourse with another girl Pushparani, P.W.9 for the purpose of sex. According to him, the police compelled him to say that A-1 was having sexual intercourse with the lady shown to him and he was tortured and beaten to say so. He had admitted that he had sexual relations with several girls, but he says that Sureshkumari was a virgin when he had sexual intercourse with her. When asked to explaining what is virginity, he says that when she had sexual intercourse with him without saying that she was having any pain, it was virginity. He says that inspite of the fact that he had sexual intercourse with P.W.3 200 times, she did not conceive. The learned trial Judge has commented on the evidence of D.W.14 and as to how he is unreliable. The learned Judge says that D.W.14 was very quick in answering in his chiefexamination, tarnishing the image of P.W.3.; whereas, the witness took at least 3 to 5 minutes to answer the questions in the crossexamination. As rightly pointed out, a reading of the evidence of D.W.14 shows that he had no regard for truth. His statement that he was having sexual relationship with P.W.3 ten times a month and inspite of that, she did not become pregnant and that he was not aware of her educational qualifications inspite of her close relationship with her, that she demanded non-vegetarian food and because of that, she did not like him and that she was having love affairs with so many other persons was nothing but a self-serving statement given to support the case of the defence in order to tarnish the image of P.W.3. It is highly improbable that his promiscuity with P.W.3 and other girls was left unnoticed by the ashram authorities. Obviously, this witness is led in to show that P.W.3 was having regular sexual intercourse with D.W.14 and with other men in the ashram liberally so that her allegation against A-1 cannot be believed. The evidence of D.W.14 is unreliable because admittedly he had not stated these facts in the affidavit prepared and he continued to be in the ashram inspite of his alleged admitted misdeeds and having free sexual relationship with many girls in the ashram. According to him, he was in the hospital for two months as in-patient for having attempted to commit suicide, but no case was registered against him. Though he denied the suggestion that he was deposing to save A-1, a reading of his evidence is clear to the effect that his deposition is unreliable, untrustworthy and he is interested in tarnishing the image of P.W.3 for his own purpose and to save A-1.

54(j) The next witness led in on the side of the defence is D.W.19, Kantha Kumar, who says that he saw P.W.3, Sureshkumari and D.W.14 together in a room and that he had advised D.W.14 that their relationship is contrary to the rules of the ashram, for which D.W.14 had told him that he was sincerely

in love with P.W.3 and that he wanted to marry her. He says in the cross-examination that he saw the police torturing the inmates of the ashram and that even after completion of his course, he was staying in the ashram. He admits that he is related to Ambikanandan, P.W.1 and that he came to India with Ambikanandan and his wife. He admits that he was in the hospital in Karnataka during 1992 and 1996. Even though he says that his role was only to water the trees and plaints, even if there was any illegal sexual relationship between the inmates, they would not be sent out of the ashram because they have no other place to go out and that only two persons namely P.W.3 and D.W.14 were having unlawful relationship. However, he admits that he was saying about this for the first time in the court. He says that good habits are being taught in the ashram and that he was staying in the ashram for the purpose of doing service to the people. A reading of the evidence of D.W.19 shows that he is unreliable and is led in only to show that P.W.3 was having sexual relationship contrary to the rules of the ashram.

54(k) D.W.28 is the person who joined the ashram in the year 1975 and was taking care of the children. She says that P.W.3 failed in the eighth standard and she was scolded for that reason and therefore, she ran away from the ashram in the year 1993 and was brought back by the police after two weeks. She further says that P.W.3 did not like the regulations of the ashram and she used to move socially with the visitors. She also confirms that on enquiry with D.W.14, Amara Kumar, he informed him that because P.W.3 had a love affair with somebody else, he had consumed poison. She has also admitted that she had filed Writ Petition No.1010 of 1995. She says that P.W.3 was moving with one Nelmi for the purpose of getting an opportunity to go abroad. In her chief-examination, she says that she used to watch the regular menstrual period of P.Ws.5, 14 and 15 and that they have not become pregnant. She describes herself in her chief-examination as a warden and states that she had been in the ashram from the year 1975 looking after the children. Her stand that even though the girls were having relationship with boys, no action was taken against them cannot be believed. Her evidence is obviously intended to show P.W.3 in a bad light.

54(l) D.W.32, the mother of P.W.3 is another highly interested witness led in on behalf of the appellants. She has admitted of her letter Ex.P.215 wherein she had written to P.W.3 stating that she met A-1 in jail and that he made enquiries about all the girls. According to her, he had assured rupees two lakhs to each of the girls in order to get them married. She had filed Writ Petition No.1688 of 1995 wherein she had stated in the affidavit that A-1 did not misbehave with any of her three girls and that she had filed two affidavits in support of A-1. According to her, she has been residing in the ashram from March, 1990 and she is closely related to A-1 and her brother is married to the sister of A-1. Her evidence is that since A-1 had reprimanded P.W.3 on her playful attitude, she left the ashram in the year 1991 and she admits that she did not give any police complaint at that time, because her future will be spoiled. This contradicts her conduct when she gave the complaint immediately after the news appeared in "The Indian Express". Her statement in the chief-examination is that the Inspector Kuppusamy had promised her to get her a separate house and every material for the house, including, if she wants, an elephant so that she may come out of the ashram.

Her evidence is unbelievable and not trustworthy. Her evidence is highly interested inasmuch as she is closely related to A-1.

55. P.W.4-Nallammal; Age-21/94; Date of Examination-2.7.1996 :

55(a) Accident Register-Ex.P.27 dated 19.11.1994 : Before the doctor, she had stated that she had contact with known persons for the past six months-milk secretion present. Complete abortion.

55(b) Statement under Section 164 Cr.P.C.-Ex.D.1 dated 23.11.1994 : She states that she consented for A-1's sexual intercourse because he was a spiritual bhakthiman and she wept after his sexual intercourse; however, she did not become pregnant. A-1, without saying anything, asked her to go without weeping. Three months thereafter, she had sexual intercourse with P.W.2 and she became pregnant. They went to the doctor for doing abortion after getting money from A-1.

55(c) Relevant Prosecution Witnesses : P.W.2, Nesan, approver, admits having sexual relations with P.W.4 at the instance of A-1 and that he took her for abortion at the instance of A-1.

55(d) Relevant Defence Witnesses : D.Ws.8, 10, 12, 28, 15, 29, and 3 1.

55(e) P.W.4 is not an orphan. She is the native of a nearby village, Pallathupatti. Besides her parents, she has three elder brothers, a younger brother and a sister. According to her, she left her house because she was not permitted to attend the school after she attained puberty. She was found by D.W.39 in the bus stand at Tiruchy and was left in the ashram in the year 1992. In the ashram, she was given the jobs of attending pooja room and the press. About six months prior to the arrest of A-1, that was in or about May 1994, at about 10.30 am on a Saturday, she was attending the pooja room. About 20 to 3 0 persons, who came to get the 'trance-interview' with A-1, left the place. Thereafter, A-1 called her from the Arulvakku room. P.W.4, thinking that he was calling her to give the viboothi (sacred ash), went there. A-1 closed the three doors of the room and thereafter, lifted the undergarment of P.W.4, pushed her down and raped her. Unable to bear this, she wept uncontrollably. However, A-1 did not leave her. He also warned her that if she was going to weep like that and tell that to other inmates, he will murder her just like Ravi was murdered. She repeats in her chief-examination that inspite of her refusal to have sexual intercourse, he forced her and committed rape on her and that she did not tell this incident to anybody. Thereafter, she adds, in the same month, A-1 raped her three to four times, twice in the Dharmasala at about 12.30 pm and once in his room at about 2.3 0 pm. She says that there are four rooms in the Dharmasala and that on no occasion, she had consented for the sexual intercourse and that on each occasion, she was forced to undergo sexual intercourse. Consequent to this, she became three months' pregnant and informed about her condition to A-1. When A-1 enquired who was responsible for that, she told him that it was he

who was responsible. Immediately, A-1 called Divya Mathaji and directed her to give pine-apple and papayya, but there was no effect. The third accused was then directed by A-1 to give drugs and injections to remove the conception. Inspite of her giving tablets and injection, it did not work, even though there was slight bleeding.

55(f) P.W.4 further says that P.W.2 is the adopted son of A-1 and at the request of A-1, P.W.2 started loving her and started to have sexual intercourse with her. At that time, she was four months' pregnant. Though A-1 compelled P.W.2 Nesan to marry her, he refused and she also refused to the marriage, but she wanted an abortion. P.W.2 is younger than P.W.4. For the purpose of getting the abortion done, P.W.2 took her to one Dr. Chitra and she refused to help her since it would be dangerous to the life of P.W.4. Thereafter, P.W.2 took her to one Dr. Thangamani. She also refused to do the abortion. P.W.2 then took her to one Dr. Muthulakshmi after obtaining her address from Dr. Thangamani and with the amount of Rs.3,000/- given by A-1, Dr. Muthulakshmi conducted the abortion. A-1 had already informed P.W.2 not to give the address of the ashram. P.W.2 also gave a different address and gave his name as Ramesh and that he is the brother of P.W.4. She stayed in Dr. Muthulakshmi's hospital for three days. In her evidence, P.W.4 has also

referred to the torture meted out to P.W.9 and P.W.14. She further admits that because of the warning and fear of A-1, she did not tell the full facts in her statement under Section 164 Cr.P.C.

55(g) P.W.4 was extensively cross-examined. She admits that she told Dr. Vasuki that P.W.2 was responsible for her pregnancy as she was asked to say so by A-1; that she did not tell the doctor of her taking the tablets; that she did not tell about the rape committed by A-1 in the police enquiry; that she did not tell the police that she was three months' pregnant when she started having relationship with P.W.2; that P.W.2 was directed to make love wi th her by A-1; and that she did not tell her parents about this when they came and met her. She denied the suggestion that A-1 did not give money for getting the abortion done and that it was only P.W.2 who had borne the expenses because it was he who was responsible for her pregnancy. She has also stated that she wrote the letter Ex.D.14 at the compulsion of A-1. In her cross-examination dated 1.8.11996, she states that though she was anxious to meet her parents and sought A-1's permission four times, she was refused permission. She denied the suggestion that she did not have a character and that only because her parents' reprimand, she had left her house. She also denied the further suggestion that she had close relationship with the boys in the ashram. She says that she never went voluntarily to talk to anybody. She says that she got emboldened to say all these things because there was no necessity for her to go back to the ashram hereafter. Her evidence is natural and acceptable as true.

55(h) The evidence of P.W.4 has not been shattered in the crossexamination. On the contrary, she had reiterated her statement and emphasised the rape committed on her by A-1 and as to how P.W.2 was made to take over the responsibility for the conception and as to how P.W.2 took her

to do the abortion. She has explained the reason for her inability to come out and say all these things in her statement before the police and in her statement under Section 164 Cr.P.C.

55(i) The defence has led in a number of witnesses to speak about the character of P.W.4 and paint her as a girl having loose character. P.W.8, one of the Mathajis, in her evidence, says that she was mainly incharge of foreign visitors. She says that she knew P.W.2 Nesan and P.W.4 Nallammal ever since she came to the ashram in or about 1993 . According to her, she saw P.W.2 and P.W.4 together in the garden behind the prayer hall hugging each other. She says that she talked to P.W.2 about this because she was not happy of seeing that in the ashram and warned both of them and she also informed other Mathajis about this. D.W.8 says that she received her spiritual name Nirmala Devi Mathaji and was ordained as Sanyasin on 10.3.1994. She says that she stayed in the ashram from October 1989 to July 1992. She further says that there are ashram rules, under which by 10 pm, everybody should retire to their rooms. According to her, "There is a strict code of conduct for the ashram inmates in the ashram. Morality was considered as the supreme thing. Free sex was never permitted in the ashram. Stringent action would be taken against the inmates of the ashram if it is known that any of the inmates had transgressed the code of conduct of the ashram."

55(j) A reading of the evidence of D.W.8 shows that she is obviously made to speak about the allegations made against the accused and to deny and oppose each one of the allegations. Her evidence looks artificial and has been made for the purpose of the case. When there was a question on the character of A-1, her answer is as follows :

"In my view, Swamiji is a person of highest morality, humility, simplicity and sincerity. He is a highly evolved spiritual master. He lives a life of a renunciated monk. He keeps celibacy. Swamiji will not consume any alcohol or drugs. He will not take non-vegetarian food. He is not a smoker and his life of austerity is meant for the people in the ashram and outsiders to follow this disciplined way of life."

The way she talks about repudiating the allegations in the chiefexamination only shows that she is a highly interested witness and is not speaking the truth.

55(k) D.W.12, is a Mathaji incharge of the Dharmasala and store. She says that she was incharge of admission of the children. She also says that she was incharge of cleaning the room of A-1. According to her, she had admitted P.W.4 in the ashram. She received information from Mathajis that P.W.4 was friendly with one boy and she also saw P.W.4 talking to P.W.2 and she reprimanded her. That was some time in the end of the year 1993. According to her, P.W.4 informed her that she was in love with Nesan and wanted to marry her. She asked P.W.4 to write to her parents and it can be decided after her parents come. The evidence of D.W.8 is untrustworthy. Her statement that inspite of P.W.4 becoming pregnant, the said fact was not

informed to her parents and the stand of D.W.8 is that they did not inform them because she herself would inform her parents. Her stand that she did not know what happened to her pregnancy and though they had taken a decision to inform A-1, whether they actually informed A-1 or not is not known. The evidence of D.W.8 is unreliable.

55(l) D.W.10 is closely related to A-1. Her parents are living in the ashram. D.W.10, had informed the learned Judges in Writ Petition (Habeas Corpus Petition) No.803 of 1994 that she would be killed if she goes to the ashram and wanted to be in the institution at Madras and that at the instance of her father, she was permitted to go and live outside the ashram, but however, she came back to the ashram along with her parents and is still living in the ashram along with her parents, her sister and her brother. D.W.10 and her parents are totally dependent on the ashram for their living. Her testimony is unreliable.

55(m) D.W.28 claims to be a warden in the ashram. She says that she is incharge of preparing for poojas and looking after the health of the children. According to her, P.W.4 left her house because she wanted to marry a boy from some other case and that she was aged 18 years when she joined the ashram. She further says that P.W.4 was in the habit of going to her parents' house and coming back. From her evidence, it is seen that D.W.28 is close with A-1 inasmuch as she knew A-1 from childhood and she joined the ashram in the year 1975 itself. She came along with the 20 girls to India. She speaks of the illegal relationships of the victim girls, which is highly improbable inasmuch as she was a warden and there being strict regulations in the ashram, they would not have permitted the girls to have such kind of loose contact with boys in the ashram, as spoken to by D.W.28. It is further admitted in her evidence that she had filed Writ Petition (Habeas Corpus Petition) No.1010 of 1995, Ex.P.213 for and on behalf of Vasanthi as her legal guardian. Though she was permitted to talk to Vasanthi, Vasanthi refused to go with her, but wanted to stay in ' Udavum Karangal', an institution looking after persons who are unable to look after themselves. The High Court dismissed the writ petition stating that the detenue was not in illegal custody. Therefore, no credibility can be attached to the evidence of D.W.28.

55(n) D.W.15 is a citizen of Congo, who claims to have come to India to develop his spirituality and claims to have attended the night watch work in March, 1994. According to him, P.W.2 expressed his intention to marry P.W.4 and then to make money and enjoy the life before becoming a sanyasi. He says that he found P.W.2 with Mary, P.W.6 in a cow shed. He also says that he saw P.W.2 and P.W.4 making love. The evidence of D.W.15 appears to be intended to show the illegal relationship of the prosecution witnesses and his evidence appears to us, artificial and just made to throw mud on the character of the victim girls. Considering the claim of his spirituality, the ashram rules, etc., D.W.15 ought to have reported the matter to the authorities and action should have been taken, if really such happenings were taking place, as painted by D.W.15.

55(o) D.W.29 is the brother of P.W.12 and P.W.15 and who is in the ashram from the beginning. He gives evidence depicting P.W.2 as an embodiment

of immorality, as P.W.2 was in the habit of smoking, reading sex books and offering cosmetics to women, in order to attract them. According to him, P.W.2 and P.W.4 were often meeting in the room belonging to P.W.4 and P.W.2 had informed him that P.W.4 became pregnant because of his relationship with her. He also says that P.W.2 had also told him that P.W.4, being a village girl, he will not be able to marry her. His deposition that he did not tell the Mathajis about the illegal ways of P.W.2 makes his statement totally unreliable.

55(p) D.W.31, Ellis Mary, joined the ashram in the year 1991.
According to her, P.W.4 was her room-mate and she had told her that since her brother was a bad man and was beating her, she came to ashram and she used to go to her parents' house. She claims to have read the love letter written by P.W.2 to P.W.4 and that she saw both of them going out during a night and that P.W.4 became pregnant because of that. She also claims that P.W.4 had told her that she had become pregnant because of P.W.2. This witness, obviously, is out to help A-1 as she not only speaks specifically of the relationship between P.W.2 and P.W.4, but also claims that the police had tortured her to say ill of A-1. The evidence of D.W.31 that inspite of her reading the love letter of P.W.2 to P.W.4 and also having seen them going out in the night and P.W.4 having become pregnant, she did not inform the same to the Mathajis or A-1, is very difficult to believe. Her evidence is totally untrustworthy.

56. P.W.5-Princy; Age-20/94; Date of Examination-2.7.1996 :

56(a) Accident Register-Ex.P.36 dated 19.11.1994 : As per the entry, she had coitus with a working male person willingly. Hymen-Not intact.

56(b) Statement under Section 164 Cr.P.C.-Ex.D.2 dated 23.11.1994 :
Admits sexual intercourse with A-1. She was called by A-1 during the time of night watch. Though she refused, A-1 had sexual relationship with her. She also says that she wanted to be with A-1 and went whenever he called her. She further admits that A-1 had sexual intercourse with her four times.

56(c) Relevant Prosecution Witnesses : P.Ws.3, 16 and 17.
56(d) Relevant Defence Witnesses : D.Ws.11 and 28.
56(e) P.W.2, Nesan and P.W.18, Dinesh are the brothers of P.W.5. She was left in the ashram in Sri Lanka by her mother at the age of three. She was taken to Courtallam along with P.W.3 and one Meera and they stayed in a lodge there. She was forcibly raped by A-1 at about 1 pm in the lodge. She says that in July 1990, two days after Guru Poornima pooja, at about 11 pm, during her night watch, she was called in by A-1. A-4 was asked to see whether anybody was outside at that time. As soon as she entered the room of A-1, he closed the door. She could not try to escape. He forced her to have sexual intercourse inspite of her pleading that she was like his daughter. Again, in the year 1991, prior to the death of Ravi, A-1 had forcible sexual intercourse with her. For the third time, in the year 1992, at about 3 pm, A-1 sent for her and when she went to his room, she was forced to have sexual intercourse. A month thereafter, at about 5 am, when she went to wake him up, A-1 had forcible sexual intercourse with her. In the year 1993, they were taken to Thanjavur and were staying in a building there. She was sent for by

A-1 at about 1 pm and when she went there, inspite of her refusal, A-1 had forcible sexual intercourse with her. Due to this sexual intercourse, she had missed her regular menstrual periods two to three times. On all those occasions, Divya Mathaji used to give abortifacients like pine-apple and papayya and inspite of that, if abortion does not take place, A-3 used to give tablets and medicines. She says that two days prior to the arrest of A-1, that was on 17.11.1994, A-1 had sexual intercourse with her. She has denied the suggestion that she had infiltrated into the ashram at the instance of certain Christian Missionaries in order to spoil the name of the ashram. She has specifically stated that she had told all these facts in the police enquiry. Her evidence remains unrebutted. The trial Judge found that the narration of the various acts of rape committed on her inspires the confidence of the court and her brevity and simple way of narration, without any exaggeration, makes her statement credible. It is seen that she had narrated the whole incident in her statement under Section 164 Cr.P.C. and according to her, even before the police. We find her evidence true and acceptable.
56(f) D.W.11, who is a Mathaji in the ashram, says that she saw P.W.5 coming out of a room with a Sri Lankan boy. According to her, the way she came out of the room was not proper and therefore, she called P.W.5 and gave her a slap on her face.
56(g) D.W.28, who is a warden in the ashram, says that P.W.5 had a connection with one Sri Lankan boy by name Kindakka and that D.W.11 saw the same and slapped her and that the same was informed to her. When she went to enquire about this, P.W.5 refused to open the door of her room and was inside the room for the whole day. The evidence of P.W.5 is not shattered in the cross-examination and nothing has come out from the attempt on behalf of the appella nts to discredit the evidence of P.W.5 by leading evidence in order to paint her with a bad character.

57. P.W.6-Rose Mary @ Mary; Age-16/94; Date of Examination-2.7.199 6.

57(a) Accident Register-Ex.P.35 dated 19.11.1994 : Says that her age was fixed at 16 as per her own statement and as per her physical examination. Hymen-Not intact.

57(b) Statement under Section 164 Cr.P.C.-Ex.D.3 dated 23.11.1994 : She admits forcible sexual intercourse by A-1 at Dharmasala and in his room; that she became three months' pregnant and was administered abortifacients by Divya Mathaji.

57(c) Relevant Defence Witnesses : D.Ws.15, 16, 28 and 33.

57(d) According to P.W.6, she is a native of Venniyaru Estate, Madurai District. She left her village in the year 1990 to her aunt's house. By mistake, she got into a wrong bus and got down at Manapparai and was taken to the ashram of A-1. At that time, her age was 13 years and she attained puberty in the year 1991. She was called by A-1, 10 to 15 days after Christmas in the year 1993 to the Pomegranate Thope and was compelled to have sexual intercourse with him inspite her refusal to do so. Consequently, she missed her menstrual periods for three months. When she informed this fact to A-1, he called Divya Mathaji and A-3 and directed A-3 to give abortion tablets

to her. She consumed the tablets and other abortifacients given to her. Later, she had an abortion and then she had her menstrual periods. Four days after the first incident, A-1 called her to the Dharmasala through a small girl and had compulsory sexual intercourse, even though she did not agree to it. Though she tried to escape from A-1, he forced her to have sexual intercourse. She says that A-1 used to take photographs while they were taking bath and used to enjoy by showing them to foreigners. She says that when she became pregnant, P.W.17 was asked to take over the responsibility of her pregnancy. She did not tell about the incident to anybody since nobody can do anything overlooking A-1. A-2 and A-4 to A-7 also told her that if she reveals anything, she will be killed just like Ravi, without being provided with food and water. She further says that in the meetings, A-1 used to talk about sex. She says that Pushparani was ill-treated by A-1 by putting his big toe in her vagina and all the girls were compelled to see that incident. In the year 1992, Aruljothi was ill-treated, her head being smashed against the wall. She has admitted in the crossexamination that she did not state about Pushparani's incident and about the taking of photographs before the police and in her statement under Section 164 Cr.P.C. She denied the suggestion that her age is less. She admits that she does not know the name of the tablets administered to her by A-3.

57(e) Insofar as P.W.6 is concerned, she was below 16 years when A-1 committed rape on her twice. She had stated about the incident in her statement under Section 164 Cr.P.C. She had given clear reasons as to how she could not reveal these things to the police. Nothing had been stated in the cross-examination so as to disbelieve the evidence of P.W.6. The learned trial Judge has commented on her evidence as follows :-

"The manner in which P.W.6 had narrated the of
rape inspires confidence of the court."

57(f) D.W.15, who claims to be a watchman appointed in the ashram in October 1993, says that he saw Nesan giving one paper packet containing clothes to P.W.6, Mary and that she was not happy because the clothes were of old model. He says that P.W.17, Anandan was found with Mary and Krishnaveni in a separate room. He also says that Anandan took Krishnaveni and Mary to the Guava Thope.

57(g) D.W.28 says that P.W.6 was brought to the ashram by a teacher and that she was chased out of her house by her aunty and that the teacher is said to have told the ashram people that she was standing alone on a road and therefore, she had brought her to the ashram. According to her, P.W.6 was not showing much interest in studies, but she wanted to dress up and roam with boys. During Saturdays and Sundays, she used to put on her make-up and walk here and there. In fact, she had reprimanded P.W.6 and thereafter, she left to the railway station with two children, but was brought back by P.W.2 and A-2. P.W.6 is said to have told her that she wanted to leave the ashram, but had to come back.

57(h) D.W.33, an inmate of the ashram, claims to be a room-mate of P.W.6. According to her, P.W.6 will not be in her room after 11 pm. She used

to put on make-up and used to chatter with the boys in the ashram. She used to adorn herself with ear-rings and wear fashionable clothes. She used to cut her hair herself and was moving with P.W.1 7 and P.W.2. According to her, she saw P.W.17 and Mary moving closely in Dharmasala. D.W.33 was residing in the ashram during the time of her evidence along with her sister, Priya. While her sister was studying in the High School at the ashram, she was attending the Viralimalai Government School and residing in the ashram.

57(i) D.W.21 is the father of D.W.33 who had filed a Writ Petition (Habeas Corpus Petition) No.1807 of 1994, Ex.P.210. In Ex.P.210, a Division Bench of this Court has observed in their order dated 17.12.19 94 as follows :-

"We examined the detenue in our chambers. According to her, her date of birth is 9.5.1979. She has crossed 15 years and she is now a student in IX standard in the ashram school. She is very specific while stating before us that she was not coerced or tortured by the police to give any statement against her will and that she was not wrongfully confined or illegally detained. She did not agree of having given a statement when questioned by the police about her unawareness of all that had allegedly happened in the ashram. She is now an inmate of an organisation called 'Udavum Karangal' in Madras. Her father, a fruit-vendor, is a resident of Ezhil Nagar, a hamlet of Keeranur.

Initially, she was interested in continuing her education in Madras in a school where the authorities of 'Udavum Karangal' had promised to send her. But, however, after a talk with her father, the petitioner herein was anxious to go with him and make her own arrangements to study in her village. As a minor, she is definitely entitled to go with her guardian, the petitioner herein." (emphasis added)

Contrary to this specific statement before the court, both D.W.21 and D.W.33 have come forward to give a statement about the beating and the compulsion by the police. The evidence of D.W.33 is untrustworthy.

57(j) P.W.6 was not cross-examined on her relationship with P.W.17 nor has she gone away from the ashram after being reprimanded by D.28. The defence witnesses have miserably failed to paint P.W.6, Mary as a girl of a bad character. On the contrary, it only shows the attempt on the part of the defence to create a wrong impression and to discredit the evidence of P.W.6. As per the evidence and her statement before the Division Bench as well as according to D.W.21, P.W.6 was a minor and in any event, below 18 years at the time of the occurrence.

58. P.W.7-Selvakumari; Age-22/94; Date of Examination-3.7.1996 :

58(a) Accident Register-Ex.P.37 dated 19.11.1994: Hymen-Not intact.

58(b) Statement under Section 164 Cr.P.C.-Ex.D.4 dated 23.11.1994 :
She states that she was thinking A-1 as God and that because of her love towards him, she went to his room and when A-1 asked her whether was wants to

have sexual relationship with him, she consented and thereafter, A-1 had sexual relationship with her once.

58(c) Relevant Defence Witness : D.W.8.

58(d) P.W.3 Sureshkumari, P.W.8 Sugunakumari and P.W.10 Sasikumari are the sisters of P.W.7. A-1 is closely related to them (relationship similar to their father's brother). She had completed VI standard and came to India along with her three sisters in the year 1984 from Sri Lanka through an unauthorised boat and got down at Vedaranyam, from where A-1 took them to Tiruchy and they were put up initially in a rented house. A-1 used to touch and move with her freely. When she asked him why he should talk to her in that manner while he was like her father's brother, A-1 is said to have replied that the said relationship was only in olden days and not now. According to P.W.7, A-1 pressed her breasts and when she questioned him, A-1 is said to have replied stating that he liked it and therefore he does it. Six months prior to his arrest, at 3 pm, when she was watering the plants, A-1 came out of his room and called her to his room. As soon as she went inside the room, he removed her clothes and forcibly raped her. When she refused to co-operate, she was slapped. She did not agree for the sexual intercourse. On a second occasion, just one month prior to his arrest, at about 4 pm, A-1 called her again to his room and had forcible sexual intercourse with her. As she missed her menstrual periods because of this sexual relationship, A-1 himself gave her certain tablets and threatened her that she should not tell this to anybody outside. Because of the fear of ill-treatment at the hands of A-1, she did not tell these facts to outsiders. She says that A-1 gave an interview that he would come out of the custody within two days and therefore, fearing that he will do something against her after coming out, she has stated something different in her statement under Section 164 Cr.P.C. P.W.7 volunteered to say something more in the chief-examination, wherein she says that in the year 1993, A-1 compelled her to suck his penis and he had repeatedly beaten compelling her to do the same. She further says that he had put his big toe in the vagina of Pushparani and when Udayakumari refused to concede to the illegal desires of A-1, she was put inside a dog kennel; Aruljothi had also suffered by her head being smashed against a wall. She also says that A-1 used to talk about sex in the meetings. P.W.7 withstood the cross-examination and has denied all the suggestions and has explained as to why she could not say these things stating that because of the fear that she would be taken back to the ashram and would be subject to the torture by A-1. We find her evidence is true, natural and acceptable.

58(e) D.W.8, Nirmala Mathaji, who had been asked to speak in support of A-1 about his highest morality, humility, etc. and as to his conduct, says that she knew all the girls involved in the case. She does not say anything bad about P.W.7. On the contrary, she says that P.W.7 used to help her in cleaning the room for the outsiders and since she was meeting P.W.7 everyday, she would have informed her if Swamiji had done anything wrong to her. D.W.8 admits that P.W.7 is a very open-hearted girl and that she would have noticed from her behaviour, if anything was wrong. Therefore, atleast as against P.W.7, there is no defence witness alleging bad about her character.

59. P.W.8-Sugunakumari @ Sudha; Age-16/94; Date of Examination-3.7.1
996 :

59(a) Accident Register-Ex.P.30 dated 19.11.1994 : Not a virgin. She is accustomed to sexual intercourse.

59(b) Statement under Section 164 Cr.P.C.-Ex.D.5 dated 23.11.1994 : She states that A-1 used to have erroneous sexual relationships with girls. Two years earlier, between 10 and 11 pm during night watch, when she was in

her bed alone, somebody threw a powder like thing on her and she became unconscious, and after ten minutes, she found herself in the room of A-1. After seeing the face of A-1, she came away running from that room.

59(c) Relevant Defence Witness : D.W.5.

59(d) P.W.3 and P.W.7 are the sisters of P.W.8. She has studied upto VII standard. She attained puberty in the year 1992. Two months thereafter, her sisters and other girls were sent out in a van. Though she wanted to go along with them, A-1 refused to send her. At about 10 pm before she could get sleep, A-1 came to her room and threw some powder like thing and she became unconscious. A-1 lifted her and took her to his bedroom. He forcibly raped her and she could not even move. After ten minutes, when she recovered, she got up and at that time, A-1 warned her that she should not tell this to any other girl, including her sisters and that if she tells the same, she will be murdered. She had fever for three days thereafter. One week thereafter, A-1 sent for her. She did not go because she was afraid to see A-1. Thereafter, A-1 came and by threatening her with a stick, took her to his room and raped her like an animal. A-1 again warned her that she should not tell this fact to any outsider. Thereafter, whenever she happened to see A-1, she used to hide herself. Two months prior to the arrest of A-1, when all the girls went to the trance interview room, P.W.8 was taken alone and raped before she tried to prevent him. The grown up finger nail of A-1 had caused a serious injury to her eye. She says that three months prior to the arrest of the accused, she had told this incident to P.W.3, Sureshkumari. She has emphatically denied all the suggestions in the cross-examination and has withstood the same and her evidence has not been shattered and remains intact. We accept her evidence as true.

59(e) The trial Judge, while seeing the demeanour of P.W.8, in paragraph 272 of her judgment, has remarked as follows :-

"While recalling the forcible act of rape, the court noticed torrential flow of tears from the eyes of P.W.8. With all pain and conscience-shocked, the court listened to the most startling and saddening story of P.W.8, who is yet to attain mental maturity. Though P.W.8 attained puberty, she is yet to grow physically and mentally. Even her childish voice is not broken into that of a grown up and adult woman. The version of P.W.8 not only inspires the confidence of the court, but also shocks the conscience of the court. "

60. P.W.9-Puspharani; Age-16/94; Date of Examination-4.7.1996 :

60(a) Accident Register-Ex.P.33 dated 19.11.1994 : Age was certified to be 16 years as per her own statement and by physical examination. She had no complaints. Hymen -Not intact.

60(b) Statement under Section 164 Cr.P.C.-Ex.P.132 dated 23.11.1994 : She states that A-1 had forcible sexual intercourse with her in his room when she was 14 years old and she was warned that she should not tell that fact to anybody.

60(c) Relevant Prosecution Witness : P.W.9.

60(d) Relevant Defence Witnesses : D.Ws.10, 11 and 14.

60(e) P.W.9 was left in the ashram when she was two years old by her mother in Sri Lanka. She came to India along with others in the year 1984. She was initially given sweeping work and night watch between 2 and 3 am and after some time, the duty was shifted between 10 and 11 pm. She was beaten in the year 1992 for coming late to the night watch. Thereafter, she was called to the pooja room of A-1 and there he raped her forcibly. She had discharge of blood and she did not inform this to others. In the year 1994, at about 11.30 pm on one day, A-1 took her to a room in the Dharmasala and laid her on a table there and had forcible sexual intercourse with her. Five to six days thereafter, she attended the meeting convened by A-1. P.W.3, P.W.14 and P.W.7 were present in that meeting. A-1 removed her clothes and directed the other girls to get hold of her ha nds and legs and beat her with a stick. A-1 put his big toe in her female part and pressed it for ten minutes. A-1 did not leave her even though she shouted out of pain. At that time, P.W.3 got up and left the place, but, A-1 compelled her to sit. P.W.9 had told P.W.16 that she did not like to be in the ashram. But, the same was, in turn, informed to A-1 and only because of this he meted out this torture to her by removing her clothes and insulting her before others. Thereafter, she did not attend the pooja and stayed in her room. In the year 1994, two days prior to Deepavali, A-1 once again compelled her to have forcible sexual intercourse with him in his room. She never consented for the illegal sexual intercourse committed by A-1.

60(f) In the cross-examination, she has explained as to why she did not say fully about these things before the police and the Magistrate. She has denied all the suggestions, including the one that she was acting with the support of P.W.1, who is in turn, the supporter of L.T.T.E. in Sri Lanka. She has withstood the lengthy crossexamination and suggestions put to her and nothing has been elicited to discredit her evidence in the chief-examination.

60(g) D.W.10, whose evidence has been let in on behalf of the defence, is related to A-1. Her parents as well as her brother and sister are living in the ashram. She speaks of the illegal relationship between P.W.9 and one Amara Kumar. Though her father was not doing any work, the ashram was meeting the expenses of her parents, her brother and her sister. Though she was close with P.W.9, she had not informed anything about the rape incident to him. In

her chiefexamination, a specific question was put to her as to whether P.W.9 was sent for after she had attained puberty by A-1, for which she has replied in the negative. We must remember that the father of D.W.10 is the brother of A-1, but still such a question has been put to D.W.10. She has denied each one of the allegations made by the prosecution witnesses like the torture meted out to Pushaparani, Krishnaveni and Aruljothi. Even though she had told the trial court that she had no complaint against the police and that she had agreed to go out because her father was prepared to take her outside the ashram and inspite of fearing that if she goes to the ashram, she will be murdered, she was taken to the ashram along with her parents and was living there. Therefore, the evidence of D.W.10 is unreliable.

60(h) D.W.11 is a Mathaji of the ashram and she denies the allegation made by P.W.9.

60(i) D.W.14, Amara Kumar, who speaks ill of Sureshkumari, also says that after breaking his relationship with Sureshkumari, he started moving with P.W.9 and he says that he had sexual intercourse with her. We have already seen that the evidence of D.W.14 is totally unreliable.

60(j) The court, while observing the demeanour of P.W.9, found that while narrating the ugly episode, the court could realise the psychological harassment to this girl. When she was confronted with the question of her humiliation, she developed a kind of giddiness and uneasiness and the cross-examination had to be stopped at this juncture and could be continued only the next day. P.W.9 was not questioned about her alleged illegal relationship with D.W.14 and obviously, D.W.14 was led in by the appellants for the purpose of discrediting the witness, but in our view, they have miserably failed to do so.

61. P.W.10-Sasikumari; Age-16/94; Date of Examination-4.7.1996 :

61(a) Accident Register-Ex.P.29 dated 19.11.1994 : As per her own statement and by physical examination, she is 16 years old. No age certificate. Hymen-Not intact.

61(b) Statement under Section 164 Cr.P.C.-Ex.D.6 dated 23.11.1994 : Studying VII standard. Admits night watch for girls. Talks about the act of A-1 of embracing and squeezing her breasts. Further says that her sister, Sureshkumari, P.W.3 used to go to the room of A-1.

61(c) P.W.10 is the sister of P.Ws.3, 7 and 8. P.W.8 and P.W.10 are twins. Her mother is D.W.32, Deivanai. She was left in the Boopalakrishna Ashram at Sri Lanka along with the other sisters at the age of 2. She came to India in the year 1984 by boat and arrived at Vedaranyam and from there, A-1 took them to Crapatti, Tiruchy. All of them went to the present ashram in the year 1986. She attained puberty in the year 1993 when she was 15 years old. She was confined to her room during that time for 15 days. After 15 days, A-1 came to her room and gave her a kiss after embracing her. The next day, she was asked to come out of the room. She was assigned the job of night watch between 10 and 11 pm. On one of these days while she was in her night watch,

she saw A-1 taking one girl by name Kumari to his room. There will be an hourly pooja in the ashram and the room of A-1 is 50 feet away from the spot. When she was near that place on one day, A-1 signalled her to come to him. When she went there, he asked her to come closer to him and he squeezed her breasts and compelled her. Fearing further advances from A-1, she ran away. Two days thereafter, she was given night watch between 1 and 2 am. During that time, A-1 came and dragged her inside his room. She tried to wriggle out of the clutches of A-1, but he slapped her repeatedly and forced her to have sexual intercourse, though she did not agree for the same. Though A-1 had taken a number of girls separately to the Arulvakku room and he had committed rape on them, she was threatened that if she revealed any of those things, she would be made a samadhi. P.W.10 says that A-1 had warned her and other girls that even though he was in the human form, he was the God and that they should not reveal anything either to the police or to the Magistrate. P.W.10 admits in the cross-examination that she did not tell the acts of A-1 either to the police or to the Magistrate and also says that the other girls who were doing the night watch did not also know about this. Nothing has been elicited contradicting the evidence given P.W.10 except the usual suggestions that she had not stated these before the police and the Magistrate.

61(d) The defence witnesses have not stated anything against this witness in order to discredit her evidence, except referring to a photograph alleged to have taken during the birthday celebrations of A-1, wherein P.W.10 was found to have participated. The argument that if she had been raped by A-1, she would not have participated in the function happily cannot be accepted since her mere participation in a function does not lead to the inference that nothing would have happened to her.

62. P.W.11-Shantha; Age-34/94; Date of Examination-4.7.1996 :

62(a) Accident Register-Ex.P.39 dated 21.11.1994 : Admits sexual contact with a known male person for one year, three times with her own will. Hymen-Not intact.

62(b) Statement under Section 164 Cr.P.C.-Ex.D.7 dated 24.11.1994 : Admits consented sexual relationship with A-1 thinking that she was the only woman with whom A-1 was having relationship. Now that she has learnt that A-1 had sexual relationship with her sister Vanitha and she had to undergo abortion, the 100% faith that she had reposed in A-1 had failed and that she was shocked.

62(c) P.W.11, who is a post-graduate qualified lady, says that she came to India in the year 1984 due to the ethnic problems in Sri Lanka along with her parents, two sisters and two brothers and they were initially staying outside the ashram. She got contact with the ashram when her mother, who had strong faith in religion and God, went to the ashram for the treatment of her brother. P.W.11 believed that A-1 is the incarnation of God and that he could take out lingam from his stomach. P.W.11 worked hard for the development of the ashram. They believed that because of the viboothi prasadam given by A-1 to her mother, her diabetes problem was reduced. In the ashram, she was attending to the people who come to the trance interview of A-1. She used to

give advance information to those persons who wanted to have the trance interview with A-1. In November 1991, at about 4 pm, when she was in the trance interview room, A-1 embraced her. When she questioned as to why he must do like, A-1 is said to have replied that he is the incarnation of God and that when many people are longing to touch his hand, she must be fortunate that he was embracing her. According to her, he made her believe that he was the messenger of God and then, even though she did not initially consent for the sexual intercourse, he made her to agree and had sexual intercourse with her. She did not inform this to her parents. When her parents were looking for a bridegroom for her, she had told them that she had decided not to marry and dedicate her life to the ashram. She was the editor of a magazine called 'Premavahini' coming from the ashram.

62(d) P.W.11 further says that A-1, by his designed act, created a rift between her father and brother and they left the ashram. Ultimately, he also kept Vanitha, P.W.13, her own sister and tried to create a competition between herself and Vanitha in order to get the attention of A-1. Her another sister, Geetha was studying B.A. outside while staying in the ashram. A-1 was keeping Vanitha in his own room for a week on the ground that she was having urinary problems. A-1 did not allow P.W.11 or her mother to see Vanitha. In November 1992, A-1 had sexual intercourse with her in the visitors' room even though she was not willing for the same. In the year 1992, when P.W.13 Vanitha, the sister of P.W.11, started vomitting, she wanted to take her to the doctor. P.W.13 did not tell her the reasons for her vomitting, but told her that A-1 would take care of it. Thereafter, A-2 and A-4 took Vanitha in the Contessa car of A-1 to Thanjavur and kept her there for three days. When she enquired, A-1 had told her that P.W.13 was having an ulcer and therefore she was vomitting. After coming back, Vanitha became very lean and was bed-ridden. In November 1993, at about 11 pm, when she was alone in the room of Divya Mathaji, A-1 came there and had sexual intercourse with her, though she did not give her complete consent. She had allowed sexual intercourse by A-1 only because she thought that he is God incarnate.

62(e) P.W.11 has denied the suggestion that she was deposing at the instance of P.W.1 and others. She has stated in her crossexamination that when A-1 was taken into custody and before he got into the police vehicle, he had told the people in the ashram that he would come back within three days and in view of the fact that he will come back, she did not say all these things before the police and had suppressed the real facts in her statement before the police. She says that A-1 had, in his lectures, stated that great saints had sexual relations with many women in their private lives and made her believe that A-1 was also one such saint who could have such sexual relations in his personal life and that is why she did not oppose to his forcible sexual relationship with her. She had denied the usual suggestions that she was supporting P.W.1, who was trying to help the L.T.T.E. and that her parents were also supporting the L.T.T.E. and only because of that they were sent out of the ashram. She admits that her sister Geetha had become a Sanyasin in the ashram in the year 1992. She denied the suggestion that Geetha was having relationship with one Jayaraj. All the three sisters, namely herself P.W.11 Geetha and P.W.13 Vanitha were taken together and they were enquired separately. She says that there was no restriction either in

the police station or in the institution, 'Udavum Karangal'. She has clarified what she meant in her statement before the doctor under Ex.D.39 that she had sexual relationship with a known person, which refers only to A-1.
62(f) P.W.11 is a grown up, well built Post Graduate qualified woman. Her evidence is that she had consented for the sexual relations with A-1. Though she makes out a case of A-1 having mislead her and therefore she had permitted her company, we are not able to see that force had been used by A-1 in her case. Hence, we find that the charge of rape as against P.W.11 is not established.

63. P.W.12-Udayakumari; Age-21/94; Date of Examination- 5.7.1996 :

63(a) Accident Register-Ex.P.40 dated 21.11.1994 : Accepts sexual contact with a known male person one year back. Hymen-Not intact.

63(b) Statement under Section 164 Cr.P.C. : Not recorded.

63(c) P.W.12 is a Sri Lankan national and is the sister of P.W.15, Malligadevi and D.W.29, Kanthan and they came to India in the year 198 4. She came along with the other girls and was kept in the rented house by A-1 and came to the ashram in the year 1986. She was assigned the work of looking after the dogs. In the year 1990, A-4 took her on the requisition by A-1. When she went inside the room of A-1, he asked her whether she was willing to have relationship with him. P.W.12 is said to have stated to A-1 as to how she could have relationship with him when she was brought up by him from her childhood onwards and that she was seeing A-1 as her father and mother. After she came away, A-1 was having a grudge against her on her refusal. Therefore, on the pretext that she was not taking care of the dogs properly, he put her in the dog kennel for three days without providing food or water. Thereafter, in May 1993, when she was watering the plaints, at about 4 pm, A-1 forced her to have sexual intercourse with him by pushing her down, even though she did not consent for the action of A-1. Since he was lying on her, she could not do anything. She says that A-1 would not allow her to talk to her brother or sister and therefore, she could not tell about the rape committed by A-1 to anybody. According to her, there are a number of orphans like her in the ashram.

63(d) In the cross-examination, she has given other particulars on the dog kennel. According to her, the dog kennel is of 8 feet width and 10 feet height and it is a stone built-up room. There is a gate for the said kennel. There used to be five dogs which were of the Kombai variety and she was inside that kennel for three days. She further says that A-1 took her from her room and put her in the dog kennel at about 9 am and that nobody in the ashram prevented A-1 from doing so. She says that while she was inside the kennel, the dogs did not bother her. She says that when she was forced to have sexual intercourse by A-1 in the flower garden, he closed her mouth and though she wanted to shout, she could not make any noise. She further says that at that time, all others had completed their work and had gone away and that before she could decide what was to be done, A-1 had completed his intercourse within

ten minutes. Her evidence is trustworthy and is acceptable.

63(e) The learned trial Judge has observed as to the demeanour of P.W.12 during her examination and has stated in paragraph 304 of her judgment as follows :-

"P.W.12 had narrated the entire incident in a simple manner and in her own language. The court could notice the reflection of pain and suffering on her face. There was torrential flow of tears even while she was recalling the incident. During the examination, she could not control herself when she was questioned as to whether she had consented for the act committed on her. Nothing could be more perverse than to reject the testimony of this victim girl.

64. P.W.13-Vanitha; Age-24/94; Date of Examination-5.7.1996 :

64(a) Accident Register-Ex.P.57 dated 21.11.1994 : Contact with a known male person for more than four years. MTP done twice. Last abortion, two years back at Thanjavur. Hymen absent.

64(b) Statement under Section 164 Cr.P.C.-Ex.D.8 dated 24.11.1994 : Admits of sexual contact while she was studying Plus One and she thought that it could be Satish Kumar. Consequently, she became pregnant and was aborted at the instance of A-1. A-1 called her one day to have sexual contact and because of the love she had for A-1, she agreed for the same. She was thinking that A-1 was having relationship only with her. She became five months' pregnant and she was taken to Thanjavur by A-1 and she was staying in the hospital at Thanjavur for three days. After returning from the hospital, A-1 had sexual relationship with her again.

64(c) Relevant Prosecution Witnesses : P.Ws.3, 11, 16, 18 and 26.

64(d) Relevant Defence Witnesses : D.Ws.15 and 41.

64(e) P.W.13 is the younger sister of P.W.11, Shantha and the elder sister of Geetha. Her brother's name is Prithviraj. She came to India along with her family from Sri Lanka in the year 1984 due to the ethnic violence there. They were living separately at R.M.S. Colony at Tiruchy. They came to the ashram in the year 1989 and were staying with their parents. She was asked to take care of the work of Divya Mathaji in July 1991, when she was studying Plus Two. In July 1991, while she was sleeping in one of the four rooms of A-1 in the midnight at 1 am, somebody had covered her face and had sexual intercourse with her forcibly. She was not in a position to wriggle out of the situation. Only after the man got off her, she realised that it was A-1. He was wearing a cap at that time. When she asked A-1 in the morning about it, he denied the same. Because of that intercourse, she missed her period and became pregnant. As per the procedure that whenever they miss their periods, they must intimate the same to Mathaji, she informed this to Mathaji and A-1. A-1 got her urine for examination and sent the same through A-7. Thereafter, she was taken to Thanjavur by A-1, A-2 and A-5 along with P.W.3. The car was driven by A-2. At Thanjavur, she was taken to Dr.

Gomathi's Hospital and her pregnancy was aborted. After staying for three days in the hospital, she was taken back to the ashram by car. The car was driven by A-2. After returning from the hospital, A-1 kept her in his room for five days and did not allow her to see her parents. She was studying B.A. First Year in the Seethalakshmi Ramasamy College at Tiruchy in the year 1992. In July 1992, at about 3 pm on a Saturday, A-1 called her in reference to a work. As soon as she went inside the room, A-1 closed the doors and pushed her on to the bed and had forcible sexual intercourse, even though she did not agree for the same. Due to this sexual intercourse, she missed her periods for five months and became pregnant. A-1 sent her urine for examination and after finding that she was pregnant, she was taken to Thanjavur by A-4 at the instance of A-1. She got the pregnancy aborted in the hospital there by Dr. Balendran. The doctor had advised her that she must not have any sexual relationship as her uterus was very weak. Three days thereafter, she went back to the ashram and she was in a very weak condition. She did not tell these facts to anybody because she believed that A-1 had godly powers and that if she tells these facts to outsiders, her family would be harmed. Ten days after her second abortion, P.W.13 told A-1 that she was informed by the hospital authorities that she was in a very weak condition. After listening to her, A-1 had forcible sexual intercourse with her. In October 1994, while she was studying Final Year B.A., at about 11 am, A-1 called her and when she went to his room, he had forcible sexual intercourse with her, though she did not agree for the same. P.W.13 further goes on to say that she did not tell this to her parents because A-1 had told them that he did not have potency and fearing that he would harm her family. She has stated in her cross-examination that her statement before the doctor that she had sexual relationship with a known male person refers only to A-1. She denied the suggestion that she had illegal relationship with others and also denied the usual suggestions that she was supporting P.W.1, Ambikanandan in his design to create a rift in the ashram, etc.

64(f) P.W.3 and P.W.11 corroborate the case of P.W.13. P.W.3 had accompanied P.W.13 when she was taken to the hospital at Thanjavur for abortion. When P.W.11 Shantha asked A-2 about P.W.13, A-2 is said to have told her that P.W.3 was having stomach ulcer and that is why she was vomitting. The soiled pads of P.W.13 were disposed of by P.W.1 6, who was in the kudil of A-1. The evidence of P.W.11 and P.W.16 clearly corroborate the version of P.W.13 that she was kept in the room of A-1 for his continued sexual relationship. P.W.18, the brother of P.W.5, denied the suggestion in the cross-examination that he did not love P.W.13. No such love affair was suggested to P.W.13 in the box. The evidence of P.W.13 is true and acceptable.

64(g) P.W.26, Dr. Gomathi, has admitted that she had treated P.W.13 on the reference letter given by A-1. She was a Special Grade Assistant Professor and temporary Civil Surgeon at the Thanjavur Medical College Hospital at that time. She says that she was practising as a private consultant since 1986. She is a devotee of A-1 and used to visit the ashram along with her family members and receive the blessings of A-1. She admits of having seen P.W.13, five years earlier when she came to her hospital accompanied by a male person along with a reference letter written by A-1.

She says that she had examined P.W.13 and had prescribed medicines to stop her bleeding and had advised her to meet her again if there was any complaint regarding menstruation. When P.W.13 was taken to Thanjavur by A-1 and A-2 accompanied by P.W.3 and P.W.5, it was for the purpose of doing the abortion to her. P.W.13 has categorically stated as to she was admitted in Dr. Gomathi's hospital and undergone the abortion. Therefore, the evidence of P.W.26 to the effect that she has prescribed medicine to P.W.13 to stop her bleeding does not lead us anywhere. It was not a case of irregular menstruation or amenorrhoea. It is not understandable as to how when P.W.13 came there having missed her periods and having become pregnant, P.W.26 has prescribed medicines to stop her bleeding.

64(h) D.W.15, a national of Congo, who came to ashram in October, 19 93 and was attending the work of night watch says that he saw P.W.13 in the lap of P.W.18, Dinesh and that he had complained about the same to the Mathajis. This witness had been found to be speaking in support of the story of the defence to the effect that all the victim girls had love affairs with others and had no moral character. No credence can be attached to such sweeping allegations made without any materials.

64(i) D.W.41 is a Mathaji of the ashram, who says that P.W.13 never complained to her anything about A-1 and gives her own opinion about P.W.13 as a girl who used to flirt with boys. D.W.41 is a partisan witness inasmuch as she was interested in saving A-1, as is clear from her evidence and no credence, therefore, can be attached to her allegations. P.W.13 has not been questioned on these allegations made by D.W.15 and D.W.41.

65. P.W.15-Malligadevi; Age-20/94; Date of Examination-18.7.1996 :

65(a) Accident Register-Ex.P.32 dated 19.11.1994 : Hymen-Not intact.

65(b) Statement under Section 164 Cr.P.C.-Ex.P.133 dated 23.11.1994 : Says that the initial attempts of A-1 were resisted by her, but admits that she permitted A-1 to have sexual intercourse thinking that she will be cured of Asthma.

65(c) Relevant Defence Witnesses : D.Ws.10, 11 and 29.

65(d) P.W.15 is the younger sister of P.W.12, Udayakumari. She was attending the library duty along with night watch. According to her, in November 1991, when she was attending to the night watch between 10 and 11 pm, A-1 called her to his room th h a ten year old boy. There, he forced her to have sexual intercourse with him, but ran away from his room. Five months thereafter, in April 1992, she had told A-1 that since she was having Asthma, she would not be able to do the work in library. However, A-1 compelled her to do the library duty. While returning from the duty at about 2 pm, A-1 signalled to her from his room to come near him. As soon as she went inside his room, A-1 embraced her. P.W.15 told him that if she gets the child without marriage, people will talk ill of her, for which A-1 is stated to have replied that if she had sexual intercourse with him, she will be cured of Asthma and thereafter, he pushed her on the bed and had forcible sexual

intercourse with her. A-1 did the act for a period of ten minutes and after completion, she returned to her room, weeping. She has stated that since A-1 had warned her that she should not reveal these things to the police, she did not say these things in the police enquiry.

65(e) In the cross-examination, P.W.15 has denied the usual suggestions of her failure to state these facts before the police as well as before the Magistrate. But, she has categorically stated in her statement that since A-1 had left the ashram threatening that he would come back and would beat her and torture if she revealed these things to the police and further, she being an orphan without parents, she had no other place to go except the ashram and hence, she did not tell these facts to the police. She denied the suggestion that Anandan had any relationship with her and she further says that even if two girls were talking together, A-1 would not like it. She had withstood the lengthy, and at times, humiliating cross-examination suggesting personal relationship. Her evidence is clear and categorical. We find her evidence as acceptable.

65(f) The defence has suggested to D.W.10 that P.W.15 was in love with P.W.18, Dinesh. Even D.W.12, Anantha Kumar had stated that P.W.17 used to boast of his relationship with girls, but no reference was made to P.W.15. The suggestion made to P.W.15 that she was having contact with P.W.17 is without any foundation and only reveals the inconsistent defence story put forward to portray the victim girls as immoral.

66. P.W.55-Krishnaveni; Age-25/96; Date of Examination-30.8.1996 :

66(a) She came to India along with Divya Mathaji and was staying in the ashram. According to her, while she was attending to the night watch in the year 1992, between 1 and 2 am midnight, A-1 called her and asked her to concede to his sexual demands in his room. P.W.55 snatched herself from A-1 and came away running. Because of her refusal, the next day, A-1 tied her to a calf and made her to run along with it. Consequently, she had severe pain for a period of two weeks. Thinking that if she continued in the ashram, she would be killed, she was about to leave the gate of the ashram when two persons caught hold of her and brought her to A-1. A-1 beat her severely for her attempt and made her to sit for three hours in his room after removing her clothes. He also warned her that she should not tell about this punishment to anybody and in case she tells the same, she would be killed. In January 1994, at about 3 pm, A-1 came to her room, pushed her on the floor and had forcible sexual intercourse with her. Again, in August 1994, at about 12 noon, when she was preparing for the pooja, she was sent for by A-1 and she went to his room. When she stood outside and called A-1, he asked her to come in and as soon as she went inside, he had forcible sexual intercourse with her. Again, in September 1994, when she was attending the night watch duty along with Mary, A-1 took her to his room, pushed her on the bed and had forcible sexual intercourse. At that time, he covered her mouth with his hand and warned her that if she reveals this outside, she would not be alive. P.W.55 went on to say that five to six days prior to his arrest on 19.11.1994, A-1 told the girls in the ashram that he may be arrested and even if he is arrested, he would come back within one or two days and warned them that they should not

tell anything about his sexual relationship. She says that she knew Anandan, but did not have any sexual relationship with him.

66(b) It is seen that no charge has been framed on this evidence probably because of her failure to reveal these things in her statement under Section 161(3) Cr.P.C. No medical examination was conducted on her either. Further, she was not arrayed along with the other girls as prosecution witness. It is seen that it is at the instance of the defence and on their petition, P.W.55 was produced and she came out with startling facts against A-1. Even after the disclosure of the sexual assault and rape committed on her by A-1, the prosecution did not frame the charge on this count. As pointed out, this only goes to show the fair and impartial investigation. In the crossexamination, P.W.55 has stated that she had told these facts to P.W.3 and not to the Mathajis or the teachers. According to her, she had not told these facts to Mark Dennis or P.W.1, Ambikanandan. She says that A-1 had asked her to say, whenever there was an enquiry, that she had sexual relationship with Anandan and that is why when she was subsequently examined by the lady doctor at Pudukottai, she has stated that she was used to sexual intercourse. According to her, A-1 had sexual intercourse with her 10 to 15 times, but she could recollect only three of them. She has rejected the defence statements made by P.W.17. She has reiterated the torturous conduct of A-1 of tying her with the calf and ask her to run. She further says in the cross-examination that when A-1 had sexual intercourse with her for the first time, she had unbearable pain and that she had fever for a week and that she did not go for the pooja and A-3 gave medicines for her fever. She has withstood the cross-examination. It is revealed that A-1 had specifically asked her to say that she was having sexual relations with P. W.17, which she refused. This shows the plan of A-1 to portray that the girls in the ashram were having illicit affairs. The evidence of this witness is clear, natural and trustworthy. Her evidence corroborates the evidence of P.W.3, the threat as spoken to by all the prosecution witnesses, the torture and ill-treatment.

67. P.W.16-Latha; Age-30/94; Date of Examination-18.7.1996 :

67(a) She was a resident of Mathalai, Sri Lanka and she is an orphan having no parents. She was left in the ashram at her very young age. She came to India along with ten girls and ten boys in the year 19 84 and was staying in the rented house at Tiruchy provided by A-1. They later shifted their residence in the year 1986 to the ashram conducted by A-1. According to her, in the year 1987, P.W.3 was called by A-1 for giving viboothi prasadam and when P.W.3 went inside the room of A-1, P.W.16 was standing outside. A-1 had compelled P.W.3 to concede to his sexual desire and P.W.16 could hear what was going on, as she was standing just outside the room of A-1. P.W.3 was crying and had refused to concede to the demands of A-1. She heard A-1 saying to P.W.3 that he was like her father and that if she had sexual relationship with him, she will not beget any child and that she could have sexual relationship with him without any fear. However, P.W.3 was shouting that she would not concede to the demand and within 20 to 25 minutes, A-1 came out of the room and some time thereafter, P.W.3 also came out weeping. A-1, on seeing P.W.16, asked her what she was doing there, for which P.W.16 had replied stating that she was just sitting. He further asked her whether she

had heard their conversation inside, for which P.W.16 answered in the affirmative. A-1 told her that she should not reveal this to anybody and if she does that, she would be beaten. Hence, she did not tell this incident to anybody else. She further says that in June 1991, P.W.16 along with P.W.13, Vanitha, were asked to come and sleep in the room of A-1. P.W.13 was sleeping in one of the rooms and P.W.16 was in another room. At about 1 am midnight, she heard the cries of P.W.13 and her shouting, " Please leave me. I am afraid. It is paining". After hearing these shouts, P.W.16 went inside the room where P.W.13 was sleeping. At that time, A-1, by covering the face of P.W.13, was raping her like an animal and having sexual intercourse.

67(b) P.W.16 further says that P.W.13, Vanitha became pregnant and A-1 was keeping Vanitha in his room after she was brought back from the hospital after abortion. She further says that for the purpose of giving egg to P.W.13, she was asked to get eggs from the shop outside. She says that in the year 1992, at about 5 am early morning, she heard P.W.5 crying. In order to find out why P.W.5 was crying, she went to the room of A-1 and saw that A-1 was committing forcible sexual intercourse on P.W.5. A-1, after having seen P.W.16 witnessing the occurrence, warned her that she should not tell this to anybody and if she says that, she would meet the same fate as that of Ravi. She further says that A-1 started beating her so as to forewarn her that she must not reveal about this occurrence to anybody. Unable to bear this torture, she consumed poison (pesticide). She was taken and admitted in Bhuvaneswari Hospital for this purpose. A-3 was attending her. A-1, A-2 and A-4 to A-7 also came and saw her. She was warned that she should not reveal that she had consumed poison. A-2 and A-4 to A-7 also warned her that she should not reveal the beatings and the consumption of poison to the police. In the year 1994, according to her, when she was attending the pooja room, she was talking with P.W.4, Nallammal. At that time, A-1 called her and asked her what was she talking about with Nallammal, for which she had replied that she understood P.W.4 was pregnant and that she was enquiring her as to who was responsible for her pregnancy and that P.W.4 was refusing to reveal the name. A-1 asked P.W.16 whom she thinks must be responsible for that, for which P.W.16 is stated to have replied that it must be A-1. Infuriated by her reply, A-1 said that he would take care of her after coming back. Finding that her continued presence in the ashram will endanger her life, she had decided to leave the ashram. She says that she had told all these things to "The Indian Express" people and when police examined her two months earlier, she had informed the same to them. She says that she did not specifically say about the rape committed by A-1 on P.Ws.3, 5 and 13 because of the fear and the warning of A-1. She says that P.W.1 was attending the requirement of Vanitha, including providing of sanitary napkins to her. On the basis of this, she presumed that Vanitha had aborted, though she did not say that she had undergone abortion. A-1 also gave P.W.16 the stained sanitary napkins used by Vanitha for disposal. Though P.W.16 is not a victim of rape by A-1, her evidence corroborates the rapes committed by A-1 on P.Ws.3, 5 and 13. Her replies to A-1 also show that A-1 had a suspicion that she may reveal these facts and had beaten her severely, consequent on which she had consumed poison and was treated for the same. Though she was cross-examined at length, she withstood the same and her evidence has not been shattered. On the contrary, she has clearly spoken to about the sexual relationship of A-1 with the

prosecution witnesses, including Divya Mathaji.

68. P.W.14-Aruljothi; Age-21/94; Date of Examination-12.7.1996 :

68(a) Accident Register-Ex.D.9 dated 21.11.1994 : Admits contact with a known male person for five years. Hymen absent.

68(b) Statement under Section 164 Cr.P.C.-Ex.D.10 dated 21.1.1995 : She says that they were attending to the work of clearing the land purchased at Fathima Nagar by A-1 by removing the stones, bushes, etc. When they requested permission from A-1 to go to school, he asked to attend to the work given to them and to take care of their studies later. She says that after she attained puberty, within two months, she was asked to oil massage the leg of A-1 and thereafter, he compelled her to hold his private parts and thereafter, he pushed her on to the bed and inspite of her crying, he closed her mouth and had forcible sexual intercourse with her. She could not do anything. She was weeping and she was warned by A-1 that if she tells this to anybody, she will not be given food and will be beaten. On the next day, at about 5.30 am, P.W.14, along with four girls, escaped from the ashram and went to one Amman Temple. They were found out by the Secretary of A-1 and were dragged to the car and brought back to the ashram. Again, A-1 took her to his room and had forcible sexual intercourse with her. Out of the fear of his beating, she had to concede to his demands. Whenever she missed her periods, she would inform the same to Divya Mathaji who will, in turn, inform A-1. P.W.3 will be asked to give unriped pine-apple and P.W.14 was asked to take the whole fruit. After the news came in "The Indian Express ", she was warned that she should not reveal these things to the police. On the next day, when they were doing night watch between 11 and 12 midnight, A-1 sent for her through A-4. A-1 forced her to have sexual intercourse. This happened five days prior to his arrest. She missed her period subsequently and on examination, she was informed that she had conceived. She requested that the pregnancy may be terminated, for which she was informed that unless the court permits, the same could not be done.

68(c) Relevant Prosecution Witnesses : P.Ws.3, 4, 6 and 7.

68(d) Relevant Defence Witnesses : D.Ws.6, 8, 28, 10, 47 and 48.

68(e) She is a native of Sri Lanka, born at Mathalai. From the age of 2, she was brought up in the ashram at Mathalai. The ashram by name Boopalakrishna Ashram was run by A-1. He left the ashram in the year 1983. P.W.14, along with others, came to India by a boat in the year 1984. A-1 took them in a van to Crapatti at Tiruchy and kept them in a rented house. She attained puberty in the year 1987. In the year 1988, on the day of Krishna Jayanthi, when she was sleeping with P.W.3, at about 5.30 am, A-1 came to her room, put his dhoti on her face and had forcible sexual intercourse with her. In the year 1989 , at about 4 pm, she was called by A-1 to his room and he asked her to put oil on his private parts. When she refused, she was beaten severely. She was warned that she should not reveal these things to anybody. On the next day, at about 5.30 am, she, along with four other girls, ran away from the ashram and they were in the Samayapuram Amman Temple. However, the

relative of A-1 could trace them and they were forcibly taken back to the ashram. A-1 tied all the three girls and beat them. In the year 1991, when she was preparing food in the kitchen, at about 1 pm, A-1 came there and took her to a room and had forcible sexual intercourse with her. Because of this, she missed her menstrual periods. She says that on every Sunday, A-3, along with Divya Mathaji, will have a meeting to enquire about the missing of the menstrual periods for the girls. When P.W.14 informed them about her missing the period, A-3 gave her some tablets and after taking the tablets and pine-apple and papayya, she got the conception aborted and thereafter, had her regular menstrual periods. However, within two days after this, while she was bleeding for the second day, A-1 had forcible sexual intercourse with her. This time, she got fever and she was treated by A-3. One month thereafter, when she was attending to the pooja, at about 1 pm, A-1 came there, pushed her on the floor and had sexual intercourse in the pooja room itself. Because of that, she again missed her periods. Once again, A-3 gave her tablets and did the abortion. In the year 1992, when she was called by A-1, she did not go because she was suffering from fever. On the next day, when she was taking food, A-1 came there, caught hold of her and smashed her head against the wall. He took a stick and thrusted it in her eyes, consequent on which she had lost her proper vision. This happened in front of all the girls. About five days before the arrest of A-1 in the year 1994, when she was attending the night watch duty, at about 12 midnight, A-4 came and took her to the room of A-1 saying that A-1 was calling her. As soon as she went inside the room, A-1 closed the doors, pushed her on the bed and had forcible sexual intercourse with her, though she did not agree for the same. She had menstruation 20 days prior to this occurrence. Before A-1 was taken by the police, he had convened a meeting, wherein he had warned them that he would come back within two days and that they should not tell anybody about the sexual relationship with them and that there will not be anybody to provide them food and shelter. Earlier, he had also warned them five days prior to his arrest in the same manner. A-1 took her separately and threatened her that she should not reveal anything. P.W.14 says that she had no sexual relationship with anybody except A-1. In January 1995, when she was examined by the doctor at the Government Hospital, she was informed that she was pregnant. She requested that the pregnancy may be terminated, but she was informed that the same could not be done without the permission of the court.

68(f) P.W.14 was subject to lengthy cross-examination, while her chief-examination was brief and specific to the points. In the chiefexamination, she states that now she had no fear since it was an 'incamera proceedings' and the doors of the court had been closed and that she was able to say whatever she wanted as she was free to say. Hence, according to her, she had stated all what she had not stated before the Magistrate. For a specific question, she says that since there are many other girls spoiled and affected, she wanted to say all the facts, but could not say everything in the enquiry on 18.1.1995 and before the Magistrate on 21.1.1995. She was ten years old in the year 1984. On 19.11.1994, when the police came to the ashram, they enquired as to the number of girls raped by A-1. The enquiry was done by a woman police and at that time, nobody dared to reveal the facts because, an hour before A-1 was taken into custody, he had warned them that they should not reveal his sexual relationship with them. She says that she

came to know that other girls were also spoiled by A-1 only when they were examined by the police at the Pudukkottai Women Police Station. They were twenty girls at that time on 21.11.1994. Only after coming to the police station, they got the courage and confidence that A-1 would not be able to come back and they decided to give the statement before the police. She admits that they had started disclosing the facts after the police beat them. The defence wanted to make much out of this in support of their plea that the police had tortured the witnesses. This will be without understanding the full implication of the statement of P.W.14 under Section 164 Cr.P.C. In that statement, as referred to earlier, she has set out the whole history of her life, as to how she had suffered at Tiruchy to clean the dry land and develop it and how she was not allowed to attend the school so that they may be made to take physical labour out of them and that after she attained puberty, how A-1 compelled her to massage her private parts and committed sexual intercourse with her forcefully and that when she escaped from the ashram, she was brought back and beaten severely and that the last rape took place four to five days prior to the arrest of A-1. In this context, the relevant portion of the statement of P.W.14 under Section 164 Cr.P.C. is translated hereunder :-

"Balan came in search of me at about 12 midnight and took me stating that Premananda Swami is calling me. After letting me inside Premananda's room, he went away, locked the door. On that day also, Premananda Swami compelled me to have sexual intercourse. This happened five days prior to his arrest. While Premananda Swami was arrested, police also took us to the Pudukkottai Police Station in a jeep. In the police station, we were enquired about the character of Premananda Swami. Since Premananda has already kept us under threat, myself and others did not reveal anything to the police. After the police beat us, myself and other girls informed that we were raped by Premananda. Only at that time, I came to know that Premananda Swami was having sexual relationship with other girls."

Therefore, the allegation cannot be taken out of context as if the police have tortured P.W.14 to make a false accusation against A-1. Some of the girls could not come out of the fear created by the warnings of A-1. Besides, this would also mean exposing their personal life and humiliation to them. In that context, the beating could have meant to shake off their inhibition and fear and make them free to say what they wanted to say. Some of their initial reluctance not to come out with the truth was got over by the assurance of police. P.W.14 has emphatically stated that as stated in Ex.D.10, prior to A-1 having sexual intercourse with her for the first time, she did not have sexual relationship with any other man. That was her first experience.

68(g) P.W.14 was asked to give a detailed description as to how A-1 committed sexual intercourse with her for the first time in the cross-examination, for which she has stated that when A-1 had first sexual intercourse with her, her virginity hymen was broken and there was bleeding. A-1 had completely inserted his penis in her female part and had sexual intercourse. Because of the bleeding, there were stains on her clothes as

well as on the bed. When A-1 had the first sexual intercourse, she had severe pain. Few days thereafter, she had fever. In the bathroom of A-1, she had washed her private parts and thereafter only she went to her room. She had cleaned her clothes also in the bathroom. She stayed in the room of A-1 for half-an-hour and she suffered pain and fever for seven days thereafter. After she was raped by A-1, she had taken unriped pine-apple and papayya twice for abortion and what she had stated before the police is true. She has stated she was forced to undergo the sexual intercourse after massaging of his legs was done in the year 1989 and the abortion was in the year 1993. She also says that once menstruation stopped, A-3, after examining the girls, would give unriped pine-apple and papayya as well as tablets. She denied that these were given only for the purpose of regularising the menstruation.

68(h) P.W.14 was once again cross-examined in reference to the last episode in detail. She says that when the doctor examined her on 21.11.1994, fearing that her pregnancy would be detected, she gave water instead of her urine. She has stated that since she had menstruation 21 days prior to the examination and thinking that there was a possibility of conception, she gave water instead of urine. She was extensively cross-examined on this aspect. She says that when she was enquired at Madras after confirmation of her pregnancy, she has stated that she had sexual relationship with A-1. She denied any sexual relationship with A-7. What she had stated in her chief-examination remains unshattered inspite of a very unfair length examination. She had been subjected to severe cross-examination without respect to the modesty and the age of the witness. From her evidence, it is abundantly clear that she was subjected to rape in the year 1988 and 1989, which of course, was before the charge period. But, this would only show as to the manner and methodology that A-1 had indulged in, forcing young and innocent girls to commit rape on them. The first instance as far as the charge period is concerned occurred in the year 1991 at Dharmasala when P.W.14 was taken from the Dharmasala at about 1 pm to the room of A-1 and she was pushed on to the bed and A-1 had forcible sexual intercourse with her, consequent on which she did not have her menstrual period. The second instance was within two days of her menstruation which occurred because of the supply of tablets and pine-apple by A-3. Even on the second day of her menstrual bleeding, A-1 had forcible sexual intercourse with her, because of which she had fever. On the third occasion, a month thereafter, A-1 had sexual intercourse with her in the pooja room itself, consequent on which she missed her menstrual period and on this occasion also, she was given tablets by A-3. The last crucial forcible sexual intercourse was five days prior to the arrest of A-1. P.W.14 became pregnant because of the rape committed by A-1 either on 14.11.1994 or 15.11.1994, which is supported by medical evidence. According to P.W.44, the foetus was aged 14 to 15 weeks as per P.M.O. 63, Ultra Sonogram Picture. P.W.14 was enquired into and thereafter to 'Udavum Karangal' at Madras. Having had her last menstruation on or ab out 29.10.1994, she missed her next menstruation around 21.11.1994 to 2.12.1994. Besides, she developed morning sickness and thereafter, she was taken to the Government Hospital on 5.12.1994 for check-up. However, only when she went for a second examination on 15.1.1995, her pregnancy was confirmed by a second report. In Ex.D.10, P.W.14 has clearly stated as to how the conception should have taken place consequent on the rape committed on her either on 14.11.1994

or 15.11.1994.

68(i) The commission of rape by A-1 on P.W.14 in the year 1988 was corroborated by the evidence of P.W.3 who was sleeping along with P.W.14 on the fateful day in the year 1988 and she also describes as to how A-1 had committed rape inspite of the refusal by P.W.14, though this rape was not in the charge period.

68(j) P.W.4, Nallammal corroborates the beating of P.W.14 by A-1 while they were talking. Consequent on the beating, P.W.14 suffered eye injury and her vision was affected thereafter. Of course, the reason for beating P.W.14 has been stated in her evidence, namely that she refused to attend to the urgent sexual call of A-1.

68(k) P.W.7, Selvakumari also confirms the incident in which Aruljothi's head was dashed against the wall by A-1 and as to how her vision was affected. In fact, this open torture was intended to create a fear psychosis in the minds of the girls who had refused to toe in line with A-1. No suggestion was put to P.W.14 about her character or affair with A-7.

68(l) As it is the case with other victim girls, without laying proper foundation, a number of questions were put to the defence witnesses to picturise the victim girl as immoral and having free sexual relationship with other boys. D.W.16, the own brother of P.W.14, has stated that she had a liking for P.W.2, Nesan and that she had not complained to him that she was sexually abused by A-1.

68(m) Another defence witness D.W.28, Chitrangani, who is the warden or care-taker of the girls in the ashram, refers to various incidents, including the one connecting P.W.14 with A-7 in a cattle shed and that she had caught them red-handed. No particulars or date of this incident was given and no action appears to have been taken against her consequent on the alleged discovery by D.W.28.

68(n) D.W.8, Nirmala Devi Mathaji, who is the disciple of A-1 and who was preparing an affidavit at the instance of lawyers for taking A-1 on bail, also speaks about the relationship of P.W.14 with A-7. As is the habit of A-1, they were trying to find out a scapegoat for the admitted pregnancy of P.W.14 which had escaped the regular weekly meetings and the subsequent 'natural treatment', since by that time, A-1 was arrested and was in custody. The first accused appears to have attempted to tamper and win over the victim girls by offering cash for their proposed marriages, for which he would make arrangements through D.W.32 as evidenced by the letter, Ex.P.215. Another instance is made through P.W.14 after having obtained orders for getting her blood sample, P.W.14 refused to give her sample subsequently. Further, he had made a statement that A-7 was responsible for the pregnancy and not him. This statement is not an evidence and is obviously contrary to all her earlier evidence. Finding that the medical evidence is unimpeachable, she had been won over to say so in the court. It was out of context and has no evidentiary value.

[C] Modus Operandi :
69. From a combined reading of the evidence of the victim girls, as discussed above, we are able to find a pattern of attack by A-1 on the victim girls and the modus operandi of A-1 in committing rape and sexual abuse on the victim girls, can be summarised below.

70. All the victim girls, being inmates of the ashram from a very tender age, were brought up and were at the mercy of A-1, he being responsible for shifting them from Sri Lanka to India through illegal means by a boat and it is he who had received them at Vedaranyam and had taken them to a private residence at Tiruchy and later to the present ashram premises. The victim girls, though some of them have parents, brothers and sisters, were under the complete control of A-1 for everything like food, water, education and clothing. Excepting few girls, others were not allowed to get themselves educated and they were made to attend the personal needs of A-1 or to take care of the ashram, including development of the land, gardening, taking care of the dogs and other works of the ashram like cooking, cleaning, preparing for pooja, etc.

71. Another strange practice seen is that once the girls attain puberty, they are kept in a secluded room for 15 days. It is A-1 who used to take them in his arms and kiss them before they are let outside. According to A-1, kissing the grown up girls is the show of affection by them towards him. Taking advantage of the physical and psychological state of mind of the girls on their attaining puberty, and their seclusion for 15 days, they were forced to submit themselves to the sexual intercourse with A-1. They were initially cajoled and enticed to have sexual intercourse stating that A-1 had divine powers and that they must be blessed by his act of sexual intercourse with them; sometimes, out of sheer force, resorted to sexual intercourse with them and on their refusal, put them to severe beating and torture. Once the girls submit themselves, inspite of their initial resistance, then the second operation becomes easier for A-1. A-1, unmindful of the presence of other girls whom he had already raped, commits rape and makes it appear that they will keep it with themselves without revealing about it to others, of course, by threatening them with dire consequences. Whenever there was any resistance, they were severely dealt with. A-1 was fully aware of the consequences of rape and the other accused have assisted not only the commission of the rape by A-1, but helped the termination of conception and pregnancy of the girls by providing natural abortifacients, tablets, drugs and if these methods fail, take the girls to hospital for carrying out the abortions. A-1 has schemed the presence of victim girls by giving them odd jobs, including night watch. He had chosen unsuspected places for his operation. He had taken advantage of his spiritual cover and with the assistance of the other accused, had a free run of his nefarious activities. The above general pattern can be easily demonstrated by referring to the evidence of P.Ws.3, 16 and 55. Their evidence is corroborated by the medical evidence, their statements before the Magistrate and the evidence of the approvers in this case, P.W.1 and P.W.2. Though their evidence was sought to be discredited by letting in defence witnesses in opposition to each and every allegation made by the prosecution witnesses, we find that the defence witnesses have miserably failed in their attempts and we find that all of them

are procured witnesses, not telling the truth, and are out to help A-1 out of the situation. Many of them are still living in the ashram and there are Mathajis ordained by A-1 and hence, no credence could be attached to the evidence of these defence witnesses.

[D] Medical evidence regarding the parenthood of A-1 :

72. P.W.14, Aruljothi, one of the victim girls, is alleged to have been raped by A-1 at 5.30 pm in the room where she was sleeping on a Krishna Jayanthi day in the year 1988. The second incident of rape is alleged to have taken place in the kudil of A-1 in the year 1991. The third alleged rape on P.W.14 by A-1 was in his room, five days prior to his arrest. Aruljothi is unmarried. In her statement under Section 164 Cr.P.C., she had specified the date of the last sexual intercourse by A-1, which would be 14.11.1994. She was lodged in the social service organisation 'Udavum Karangal' at Madras along with the other girls. She was taken to the Government Hospital, Kilpauk on 15.1.1994 and again on 17.1.1995 and on examination, she was found to be pregnant. On her request for aborting the foetus with the permission of the court, doctors were requested to abort the foetus of P.W.14 and to collect the products of conception and her sample blood to be sent for D.N.A. Testing and after getting her consent, her pregnancy was terminated on 21.2.1995 by P.W.44, Dr. Shantha Gokuldoss with the assistance of Dr. Kamala. Ex.P.100 is the abortion certificate issued by Dr. Kamala. In the meantime, C.C.M.B., Hyderabad was contacted for getting the D.N.A. examination of the sample done. The Director of C.C.M.B. was addressed as per Ex.P.206. This was much commented upon by the defence. The request of the prosecution for scientific examination cannot be construed as a request for a favourable report. C.C.M.B. is an independent body and the Scientists there are professionals and are in no way obliged to the prosecution. We do not find any merit in their suspicion or substance. As per their instructions and circular Ex.P.172, the products of conception and 10 ml. sample blood of P.W.14 were collected by P.W.56 in the special containers sent by C.C.M.B. and sealed. On the same day at 4 pm, P.W.35 collected the sealed parcel from P.W.56 and the same was handed over in person to C.C.M.B., Hyderabad on 22.2.1995 at 10 am. Again, as per the requisition of the Judicial Magistrate, after filling up the proforma sent by C.C.M.B. and after affixing the photograph of A-1 therein, 10 ml. sample blood was taken from A-1 by P.W.46 on 22.2.1995. Ex.(A) Identification Card-1 is the said proforma. After obtaining the permission from the Judicial Magistrate, P.W.33 collected the parcel containing the sample blood of A-1 from P.W.46 and he travelled in an airconditioned car to Madras and at Madras, it was handed over to P.W.34, Inspector of Police who was then waiting. The said parcel was handed over to C.C.M.B. at Hyderabad by P.W.34.

73. After examining the samples, P.W.59, Dr. Lalji Singh has given his report, Ex.P.185, opining that A-1, Premananda was responsible for the products of conception/aborted foetus beyond reasonable doubt, whose biological mother is P.W.14, Aruljothi. His further reports are Exs.P.189 to P.191.

74. With the permission of the court, on behalf of the defence sample blood was taken from A-1 on 24.3.1997 and the sample of the foetus was also collected from C.C.M.B., Hyderabad by D.W.49 and D.W.46. P.W.14 had

subsequently refused to give her sample blood for defence purpose. According to D.W.49, the available samples were sent to the University Diagnostics Laboratory, London, United Kingdom on 1.4.1997. Ex.D.98 is their report which has opined that A-1 cannot be the father of the foetal tissues.

75. The prosecution called in P.W.59, Dr. Lalji Singh in support of their report that A-1 is the biological father of the aborted foetus of P.W.14. D.W.49 was also called as a witness by the defence.

76. In the light of this conflicting expert testimony, it is necessary to understand the scientific background of D.N.A.

76(a) The basic unit of life is the Cell. Each Cell contains the same genetic programming. Within the nucleus of the Cells is the chemical substance known as D.N.A.

76(b) D.N.A., Deoxy Ribo Nucleic Acid, is the fundamental natural material which determines the genetic characteristics of all life forms. Humans have human form and elephants have elephant form because of the differences in the make up of the respective D.N.A. Every cell that contains a nucleus contains D.N.A. There are approximately 10 trillion cells in the human body and almost all of them contain D.N.A. The red blood cells which do not have nuclei are significant exceptions. Within humans, much of the D.N.A. Is identified. It is this identity of D.N.A. that makes all humans look like humans. Humans create human offspring by transferring their D.N.A. to their children. The science of genetics states how and why this happens.

76(c) D.N.A. Is composed of a long double helix which looks like a spiral staircase. A single D.N.A. molecule consists of approximately three billion base pairs. The sequence of these three billion base pairs along with the hand rails of the D.N.A. is the key to the information represented by the D.N.A. This sequence is responsible for producing arms, legs, kidneys or brain cells. Of this sequence, approximately three million sites vary from person to person. There are numerous differences between individuals because of the manner in which the base pairs are arranged. These variations called 'Polymorphisms' occur in different regions of D.N.A. They are readily detachable when there lengths are altered by the action of restriction enzymes, thereby giving rise to 'Restriction Fragment Length Polymorphism (RFLP)'. Identical twins are the exceptions. Since they are both the product of a single union between one egg and one sperm cell, the twins' D.N.A. is identical.

76(d) Each individual's D.N.A. is apportioned into 46 discrete sections within the nucleus of each cell. These sections are called Chromosomes. 22 of these chromosomes come from the mother and 22 come from the father. They are genetically arranged in pairs. Additional two sex typing chromosomes denominated 'X' and 'Y' are present.

76(e) During reproduction, the chromosome pairs of mother and father split apart and then re-combine. It takes one chromosome from the mother and one chromosome from the father to create 22 new chromosome pairs of their

child. Females have two 'X' chromosomes and males have one 'X' and 'Y' chromosomes, thus giving each human a total of 46 chromosomes.

76(f) A portion of D.N.A. which is responsible for certain traits is called 'Gene' (e.g., different person has a gene for the production of eyes). All humans have thousands of genes located on the 46 chromosomes. Each gene is located at a specific site or locus, upon a specific chromosome. Alternate forms of genes are called 'Alleles'. This total pool of genetic information is known as Human Genome.

77. In recent years, scientists have discovered certain methods by which they can extract the D.N.A. from a cell and examine the patterns of information contained in the cells. Using these methods, scientists claim that they are now able to determine if two samples of D.N. A. containing materials have come from the same individual or if there is a paternal or maternal relationship between the two samples.

78. Isolation of D.N.A. is the first step for forensic analysis of the sample. There are generally accepted techniques and experiments that exist that are capable of producing reliable results in D.N.A. identification. There are eight separate scientific procedures or experiments which are conducted. They are :-

(1) Digestion of D.N.A. into fragments by restriction enzymes.
(2) Separation of D.N.A. fragments by electrophoresis.
(3) Staining the separate fragments for getting illumination by ultra-violet exposure.
(4) Transferring the D.N.A. on to a nylon membrane.
(5) Hybridisation with a labelled probe of interest.
(6) Stringent washing of the membrane.
(7) Autoradiography.
(8) Analysis of the band pattern produced by the method.

The laboratory can then examine the processed x-rays and based upon the location of the markings, make a determination as to whether a D. N.A. match has occurred.

79. Having understood the process involved in D.N.A. Analysis, we have to consider :-

(1) Whether the D.N.A. evidence is generally accepted by the scientific community ?
(2) Whether the testing procedure used in this case is generally accepted as reliable, if performed properly ?
(3) Whether the tests were performed properly in this case ? and
(4) Whether the conclusion reached in this case is acceptable ?

80. It is stated that the D.N.A. evidence is admissible in every State and Federal Circuit in one form or the other in the United States of America. No other scientific technique has gained such widespread acceptance so quickly and no other technique has been potentially as valuable to the criminal justice system as the D.N.A. It is submitted that D.N.A. Typing is possibly the most powerful innovation in forensics since the development of finger printing in the last part of the 19th century. In a recent book by Haren Lavey titled "And the Blood Cried Out", it is stated that by January 1990, D.N.A. Analysis had been admitted into evidence in at least 185 cases by 38 States and the U.S. Military.

81. The journal "Forensic Science International", Volume-88 No.1 dated 18th July 1997, a special issue relating to the legal position of Forensic D.N.A. Analysis in Europe gives the report from various countries. As per the report, the following countries have accepted D.N.A. Analysis as reliable, viz., Denmark, Sweden, The Netherlands, Belgium, The Republic of Ireland, France, Italy, Greece, Spain, Portugal, Austria, Switzerland and Germany, subject to certain limitations. For instance, in Denmark, the results of D.N.A. investigations were used more systematically since 1990 in criminal cases such as rape, homicide, etc. Since 1990, there has been a tendency in court decisions to put more and more emphasis on D.N.A. investigations. In Norway, based on recommendations from an official committee, some changes have been introduced in the Norwegian Legislation to allow the use of D.N.A. evidence in criminal case work. But, in Finland, the tests are not used as 100% evidence. In Sweden, D.N.A. Analysis has been regarded by the court, and in the public opinion, as an important tool for forensic case work right from the beginning. In 1990, the Dutch Supreme Court admitted the use of D.N.A. as exculpatory evidence. A new D.N.A. Legislation was incorporated in the Dutch Code of Criminal Procedure from 1.9.1994, which forces non-consenting defendants to give biological reference samples, and the results of the D.N.A. tests can be used as proof of guilt. Insofar as France is concerned, the consent of interested parties is mandatory with the restriction that in the case of a suspect, his refusal can be interpreted as a prima facie evidence.

82. D.N.A. evidence has been accepted in the United States of America in a number of high profile cases, like for instance, the O.J. Simpson's Case (PEOPLE of State of California vs. Oranthal James Simpson).

83. From the above, it is clear that D.N.A. Analysis is generally accepted and recognised in general. Some of the decisions of the U.S. Courts which have accepted D.N.A. results are referred to hereunder :-

83(a) In People of the State of New York vs. Joseph Castro, Supreme Court of New York, Bronx County (545 N.Y.S. 2d 985 ; LEXSEE 144 Misc. 2d 956), it was concluded that there is general scientific acceptance of the theory underlying D.N.A. Identification and that D.N.A. forensic identification technique and experiments are generally accepted in the scientific community and can produce reliable results, though in that case, the D.N.A. Identification evidence was found inadmissible.

83(b) In U.S.A. vs. Sylvester Young @ Buddie Young, U.S. District Court for the District of South Dakota, Central Division (754 F. Supp. 739 ; 1990 US District LEXIS 18657) dated December 18, 1990, the Court held that D.N.A. evidence is generally accepted by the scientific community. In that case, it was held that the technique used was reliable, the testing was properly performed and the evidence was more probative than prejudicial.

83(c) In State of Washington vs. Curtis Scott Buckner, Supreme Court of Washington (125 Wn. 2d 915) dated March 16, 1995, the Court took the view that the Restricted Fragment Length Polymorphism method of D.N.A. Typing is admissible under the Frye Standard, though ultimately the court remanded that case for further proceedings.

83(d) In People of the State of New York vs. Basheen Rush, Supreme Court of New York, King's County (165 Misc. 2d 821) dated June 7, 1995 , the Court concluded that D.N.A. evidence alone was legally sufficient to support the guilty verdict. In this case, the Court has observed that there appear to be two reported decisions in the U.S., both of which have upheld criminal convictions where the sole evidence linking the defendant to the crime is D.N.A. evidence. The cases referred were Springfield vs. State (860 P.2d 435) and People vs. Soto (34 Cal. App. 4th 1588). It is observed as follows :

"The holdings in these cases are consistent with the recognition and approval, lawyers and judges have recently bestowed on D.N.A. evidence. In less than a decade, D.N.A. evidence has been used in thousands of homicide, rape and paternity cases, often with little challenge from defence attorneys. The technology is regarded as theoretically fool-proof."

The Court also observed,

"The D.N.A. evidence is not infallible, no evidence is. Critics of forensic science are able to cite examples of sloppy laboratory performance to support their claim that there is room for drastic improvement."

Ultimately, the Court held,

"This Court is, therefore, satisfied that the testimony of even one D.N.A. Expert that there is a genetic match between the semen recovered from the victim of a rape and the blood of the defendant, a total stranger, and the statistical probability that any one else was the source of the semen is one in 500 million is legally sufficient to support a guilty verdict."

84. Paul E. Tracy, Ph.D. and Vincent Morgan, in their Article, "Big Brother And His Science Kit : D.N.A. Databases for 21st Century Crime Control?" published in the Journal of Criminal Law and Criminology, North Western University School of Law, Volume-90/No.2/Winter 2000, have highlighted many aspects of D.N.A. Testing. In their introduction, they have stated as

follows :

"Scientific community has conclusively demonstrated the reliability and validity of D.N.A. Testing and the 'matching' of an evidence sample with that taken from a suspect for the purposes of exclusion versus inclusion can be highly successful. Further, although at one time there was considerable debate about the admissibility of D.N.A. evidence, the point is now moot."

The Article says that presently, there are three principal methods by which D.N.A. Testing is usually accomplished. They are :-

(1) Restriction Fragment Length Polymorphism (RFLP)
(2) Polymerase Chain Reaction (PCR)
(3) Short Tandem Repeats (STRs)

According to the authors,

"Depending upon the quantity and quality (i.e., molecular weight and possible degradation) of the forensic sample available, the time frame available for testing and other factors, one or more of these methods will generally produce valid results for making a 'match' between an evidence sample and a suspect sample for the purposes of excluding or failing to exclude the suspect as the perpetrator."

While dealing with D.N.A. effectiveness, the authors say as follows :

"There are two basic applications for D.N.A. in law enforcement, and these two widely divergent applications must be differentiated so that the proper focus will be clear. First, there is D.N.A. testing concerning known suspects and evidence samples. Here, the D.N.A. extracted from bodily fluids or tissues found at a crime scene (e.g., blood or semen) and a victim's D.N.A. extracted from a residue left on the offender (e.g., victim's blood) are compared to determine if there is a match. It would be seen that in the absence of other explanatory information, a D.N.A. match or non-match will be dispositive of the suspect's involvement in or his/her innocence of the crime. We wholeheartedly and unequivocally endorse this particular use of D.N.A. Testing with known offenders, and further, encourage its use as broadly as possible. The only meaningful caveats we would offer involve proper training for crime-scene technicians and laboratory personnel as well as sound certification policies and a well-conceived oversight and monitoring process for both evidence collection and subsequent D.N.A. Testing."

85. In our case, Dr. Lalji Singh has been examined on behalf of the prosecution as P.W.59. Dr. Lalji Singh is working as the Deputy Director at the Centre for Cellular and Molecular Biology at Hyderabad. This Centre is one of the Constituent Laboratories of the Council of Scientific and Industrial Research under the Department of Science and Technology, Government of India. Dr. Lalji Singh initially joined the Centre as Scientist-E-II and was subsequently promoted as Scientist-F (Deputy Director) from 1992. He is B.Sc., M.Sc. and Ph.D. qualified from Banaras Hindu University, having obtained his Doctorate in the year 1971. He had worked in the Calcutta

University as a Pool Officer from 1971 to 1974. He was awarded Commonwealth Fellowship to go to United Kingdom and he was working in the Institute of Animal Genetics, University of Edinburg from 1974 to 1987. He came to India and joined the C.C.M.B., Hyderabad on 3.6.1987. According to Dr. Lalji Singh, he had published 57 Scientific Papers in internationally reputed journals. He was awarded the Banaras Hindu University Gold Medal in 1966, the Science Academy Medal for Young Scientists for the year 1974 and various other awards like the C.S.I.R. Technology Award for the year 1992 for Biological Sciences, Professor S.P. Roy Chaudhuri 75th Birthday Lecture Award for the year 1994, Professor Viswanathan Memorial Lecture Award for the year 1995, VASVIK Research Award for Biological Sciences and Technology for the year 1992 and the Ranbaxy Research Award in the field of Basic Medical Sciences for the year 19 94. He is the elected Fellow of the Indian Academy of Sciences since 1989, Fellow of National Academy of Sciences since 1991 and Fellow of Indian National Science Academy elected in 1993. He is also a Member of various other organisations like the Indian Society for Cell Biology, etc. According to him, he had given opinion in 96 cases and has also given evidence in 5 cases in various courts, including the Rajiv Gandhi's Assasination Case.

86. P.W.59 says that on the communication by the Director General of Police, Madras, he had sent instruction forms and special containers to collect the blood samples and the products of conception and also indicated the manner of collection, packing and forwarding of the same. The doctor says that D.N.A. Fingerprinting was carried out by using the Multi Locus Probe, i.e., Bkm derived 2(8) Probe; Bpf. 3.8, a Single Locus Probe; and by Polymerase Chain Reaction. The details of the examination and the results were given in his report Ex.P.185. The doctor has stated as follows :-

"When D.N.A. profiles in track 3 (Premananda) was compared with that of track 2 (tissue from the foetus) and track 1 (Aruljothi), it is seen that every band present in track 2 is fully accounted for either being inherited from the mother (track 1) or from the alleged father (track 3). The alleged father Premananda (source of Exhibit A) and the mother Aruljothi (source of Exhibit C) are, therefore, the biological parents of the dead foetus (source of Exhibit B).

There are 23 bands shown by arrows in track 2 (tissue of foetus) which are not present in track 1 (mother Ms. Aruljothi Fig.1A and 1B). Since maternity is not in question, these bands must be inherited from the biological father. Since all of the paternal bands in the tissue of foetus are present in track 3 (alleged father Premananda), without any exception, shown by arrows (tracks 2 and 3, Fig.1A and 1B), the alleged father Premananda (source of Exhibit A) is, therefore, responsible for the product of conception (source of Exhibit B).

In order to confirm that the paternally inherited bands in the child are exactly the same as in the alleged father, equal amount of D.N.A. 7.5 ug from each of the alleged father and the foetus were run in track 4 (Fig.1A and 1B). In track 4 (Fig.1A and 1B), all the bands shown by arrows are exactly the same as in track 3. Had these bands been different, additional bands would have appeared in track 4 (appeared in track 4[Fig.1A and 1B]) adjacent

to the bands shown by arrows in track 3 (Fig.1A and 1B), but this is not so.

The test was repeated twice with the same enzyme and every time the same results were obtained (Fig.1A and 1B). Autoradiographs were over-exposed to score very faint bands and under-exposed to avoid fusion of very close predominant bands. The result presented is the outcome of all the results pooled together.

The chance that the dead foetus is not related to the alleged father Premananda but happens to share the 23 bands derived from the biological father detected by the Multi Locus Probe Bkm with Hin FI and Bst NI, is 0.223 = 8.4x1017 = one in 1.19 x 1015, considering the world population 6.0 x 109, where 0.2 is the mean probability of occurrence of a fragment (using Bkm Probe) in two unrelated individuals.

Single Locus Fingerprinting :
The above conclusion was further substantiated by using a highly polymorphic variable number of tandem repeat (VNTR) human D.N.A. Clone Bpf 3.8. This is extensively used as single locus probe for D.N.A. Fingerprinting tests."

.....

"The above tests prove beyond any reasonable doubt that the alleged father Premananda (source of Exhibit A) is responsible for the product of conception (source of Exhibit B) whose biological mother is Ms. Aruljothi (source of Exhibit C).

During the course of the examination and for conducting the test, I have used three probes, one is Multi Locus Probe called Bkm derived 2 (8) Probe, which gives large number of bands. The second probe is Single Locus Probe called Bpf 3.8, it gives two bands in Hetero zygous condition and one band in Homo zygous condition. Multi Locus Probe and Single Locus Probes are our probes. The third probe I have used is published by the western country scientists. It is based on Polymerase Chain Reaction, P.C.R. The conclusion of all these tests are the same as with earlier probes used in the report. The photographs taken are enclosed along with Ex.P.185 report. The photograph pertaining to Multi Locus Probe is Ex.P.186. The photograph taken during the Single Locus Probe is Ex.P.187. The photograph taken for the Polymerase Chain Reaction is Ex.P.188."

.....

"Ex.P.189 is the Report of finding using Polymerase Chain Reaction products of DNA recovered from the Exhibits 465, 466 and 467 by using primers T.1940 and T.1941. Ex.P.190 is another report of the finding using Polymerase Chain Reaction products of DNA recovered from the Exhibits 465, 466 and 467 by using primers T.1942 and T.1943. Ex.P.19 1 is the Report using the probe analysis of Micro Satellites (i) HUMVWA-31A (ii) HUMTHO-1 (iii) HUMF-13A1 and (iv) HUMFES/FPS using Genescan programme for establishing Relatedness." (emphasis added)

87. After the declaration of the matching bands and the statistical analysis, P.W.59 has stated that the chances that the aborted foetus is not related to A-1 are extremely remote. Considering the evidence of P.W.59, the scientific finding arrived at by him that A-1 is responsible for the foetus of P.W.14 is to be accepted. Once three samples are found to have similar profiles, there is no significance in the argument of lack of database, and the defence cannot be permitted to say that the patterns have matched by chance or that it could be one in a million possibility. P.W.59 has pointed out that in case of paternity disputes, the paternity of the child is determined by identifying as to which are the maternal bands and which are the paternal bands. The comparison of D.N.A. Fingerprinting of the child with that of the mother will identify as to which are the maternal bands. Illumination of these bands will then give those bands inherited by the father which are specific. If the alleged father contains all these bands, then he is the true biological father of the child and the paternity is confirmed. Hence, the evidence of P.W.59, who also relied on the Article published by Cellmark Organisation, Ex.D.42 that no large scale database is required in paternity dispute, is to be accepted.

88. The argument of the learned senior counsel for A-1 that P.W.59 cannot be a competent witness as he was doing research on animals deserves no consideration. Whether the expert was doing genetic research on animals or on human beings, we do not find that it makes any difference while undertaking this experiment. Whether he had worked on silkworms, snakes or other animals, he was a scientist doing research in molecular biology and to belittle the scientific knowledge of such an expert would only show the ignorance of the understanding on the subject. P.W.59 is Scientist No.V and Dr. G.V. Rao is Scientist No. III. All the tests could have been conducted either jointly or under the supervision of P.W.59, even though some of the tests were conducted by Dr. G.V. Rao, and it does not in any way affect the evidence of P.W.59. As rightly pointed out, if really the defence thought that Dr. G.V. Rao was so essential for proving the evidence, the defence could have summoned him also. The argument on the nature of the C.C.M.B. Laboratory also cannot be countenanced. They are also taking fingerprinting for forensic purposes right from 1988. The infrastructural facilities and the knowledge that C.C.M.B. possesses cannot be doubted. Of course, there are other labs available in Madras, but they are of recent origin. It is not clear whether the Madras lab is equipped to undertake D.N.A. Fingerprinting to the standard expected of.

89. There cannot be a case for tampering or alteration of the samples as contended by the appellants, and it is not supported by any material except a suspicion. From the evidence, it is seen that the collection of the sample was done as per the instructions given by P.W.59 and they were transported as per the instructions and acknowledged to have been received in good condition. P.W.59 has spoken as to how he handled the sample. We do not find that there was any possibility of contamination, tampering, alteration or break of link in the laboratory or in the process of experiment and opinion. After carefully analysing the evidence, we have no hesitation to hold that the accepted methods have been followed and the samples repeatedly tested and the conclusions arrived at are clear, convincing and are acceptable.

90. On behalf of A-1, D.W.49, Dr. Wilson J. Wall has been examined and the report obtained from him, Ex.P.98 has been marked. It has to be stated at the outset that the evidence of D.W.49 has to be looked with suspicion and doubt. In his evidence, he admits the following :

(1) He is a private consultant.
(2) He was requested to undertake a review of the evidence of Dr. Lalji Singh, P.W.59.
(3) He had held conferences with the defence counsel both in London and in India.
(4) He was present in the Court on 28.10.1996 and 29.10.1996 when Dr. Lalji Singh (P.W.59) was cross-examined by the counsel for A-1.
(5) He says, "I have been instructed by the counsel for the accused to inform this Honourable Court that if the prosecution wants to repeat this experiment, the accused is prepared to pay the cost of the same".
(6) He admits that the test was conducted at the laboratory called University Diagnostics Laboratory, London and that he had a working arrangement with the above said laboratory, but they are professionally independent. He further says, "I was present in this Court instructing the defence lawyer for cross-examining P.W.59. I am not a scientist attached to the University Diagnostics Laboratory, London.

From the above, it could be seen that D.W.49 is a partisan witness engaged by the defence for the purpose of reviewing the evidence of P. W.59 and he had been instructing the defence counsel for crossexamining P.W.59. He has also been instructed by the counsel for the accused to submit before the Court that the accused is prepared to pay the cost for repeating the experiment. That apart, it is seen that the report furnished by him is to the effect that it is impossible that A-1, Premananda, is the father of the foetal tissue. According to him, when the above laboratory was working independently and that he had only a working arrangement with them, it is no t understandable as to how he could give a joint opinion by himself without the opinion of the other scientists who have conducted the test and running the laboratory. D.W.49 is neither the owner of the laboratory nor is he attached to the laboratory where the experiments are said to have been conducted.

91. P.W.14, Aruljothi, had refused to give her blood sample for the second time for the purpose of either assisting or in support of the defence. Therefore, D.W.49 had only the sample of the aborted foetus and the sample blood of A-1. Hence, the test conducted in the University Diagnostics Laboratory, London is unreliable. Without the D.N.A. profile of the mother, there cannot be any proper interpretation of the D.N.A. profile of the aborted foetus. D.W.49 has also not substantiated his evidence with any visual presentation like photographs, etc. The attempt on the part of D.W.49 was to highlight the possibility of contamination, which is found not established in the light of clear evidence of P.W.56 who has collected the aborted foetus and the blood sample. As deposed by P.W.59, there was no contamination in the feotal sample and if it were there, additional bands

would have appeared in track 2 (D.N.A. profile of the aborted foetus in Exs.P.18 7, P.189 and P.190). Similarly, no such additional bands were found in the blood sample of the mother. That apart, D.W.49 had not conducted the Multi Locus Probe and Single Locus Probe tests so as to disprove the evidence of P.W.59. It is not understandable as to how he can contradict the evidence of P.W.59 without doing the experiment with those two probes. On the contrary, it is seen that neither the University Diagnostics Laboratory, London has submitted any report nor the scientists namely James Watson and Paul Debenham, who are alleged to have conducted the tests, have signed the report, Ex.D.98. Even D. W.49 himself had not signed Ex.D.98, report. Apart from that, there are no lab results excepting some data without any interpretation or explanation. As rightly pointed out by the learned Sessions Judge, D.W.49 had stated that the S.T.R. Method used by the London laboratory is theoretically quite straight forward, but is fraught with potential problems. However, the appellants had not taken any efforts to explain whether those potential problems were got over by D.W.49. Further, no visual presentation or explanation on the test results was furnished before the Court. The P.C.R. Test conducted by C.C.M.B. is placed higher than the S.T.R. Test, because P.C.R. products often have 100 to 1200 base pairs, where the interpretation of results would be more reliable. Whereas, the report and the evidence of D.W.49 was without any demonstrable evidence or proof to the satisfaction of the Court. The evidence of P.W.59, who is the Deputy Director of the Laboratory and who had himself participated in the conduct of the experiments and the tests, is more authentic and reliable. We accordingly hold that the opinion of P.W.59 is to be accepted. Whereas, we are unable to accept the evidence of D.W.49 for the reasons stated above and it has to be rejected, apart from the fact that he has not conducted the experiment himself and the report has not been properly signed, authenticated and explained with materials.

[E] Factors to be considered :

92. It has been held in a series of decisions dealing with rape that a rapist not only violates the victim's privacy and personal integrity, but invariably causes serious physical as well as psychological harm in that process. Rape is not merely a physical assault, it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a greater responsibility while trying an accused on a charge of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix which are not of a fatal nature to throw out an otherwise reliable prosecution case. The testimony of the prosecutrix must be appreciated in the background of the entire case.

93. A rape, for a woman, is deathless shame and must be dealt with as the gravest crime against human dignity. A girl, in a traditionbound non-permissive society, would be extremely reluctant even to admit that any incident, which is likely to reflect upon her chastity, had occurred, being conscious of the danger of being ostracized by the society. No woman ordinarily will accuse a person or rape since she sacrifices thereby, what is

dearest to her. The conduct and behaviour of the victim girl must be judged in the backdrop of the situation in which she was placed. The purpose of the stay, the person and his position, the misuse or abuse of office and the despair of the victim which led to her surrender, are all relevant factors which must be present in the mind of the court while evaluating the conduct and the evidence of the prosecutrix. If the position of the accused is one representing absolute authority, and the submission of the victim is on account of the fact of her having no option but to concede to the will of the authority, then the question of willing party does not arise since she had been deprived of her will by the show of authority. The court must take into consideration the ground realities. The court must hear the loud cry for justice by the society and more particularly, in case of a heinous crime of rape of innocent, helpless children. Cases involving sexual molestation and assault require a different approach-a sensitive approach and not an approach which a court may adopt in dealing with a normal offence under penal laws. Girl child is in a very vulnerable position and one of the modes of her exploitation is rape, besides other modes of sexual abuse. These factors point towards a different approach required to be adopted in such cases.

94. The principle that the prosecutrix in a rape case cannot be considered to be an accomplice and the only rule of law is the rule of prudence and there is no rule of practice and there must, in every case, be a corroboration before a conviction can be allowed to stand, has been laid down in a series of decisions by the Supreme Court. It has been held that we cannot cling on to the 'fossil formula' and insist on corroborative testimony. Ordinarily, the victim's evidence must be accepted without requiring further corroboration. A prosecutrix of a sex offence cannot be put on par with an accomplice. She is, in fact, a victim of the crime and her evidence must carry the same weight as that attached to an injured person unless there are special circumstances which call for greater caution. To insist on corroboration except in the rarest of rare cases is to equate a woman, who is the lust of another, with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated by any material particulars as in the case of an accomplice to a crime. Ours is a conservative society where it concerns sexual behaviour. Ours is not a permissive society as in some of the Western and European countries. Our standard of decency and morality in public life is not the same as in those countries. The standard of proof to be accepted by court in such cases is that it must take into account the fact that such crimes are generally committed slyly and very rarely direct evidence of a person other than the prosecutrix is available. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. It has been held that there is no legal compulsion to look for corroboration of the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. A conviction can be recorded on the sole testimony of the prosecutrix if her evidence inspires confidence and there is absence of circumstances which militate against her veracity {vide Madhav Ram vs. State of U.P. [A.I.R. 1973 S.C. 469], Krishnan Lal vs. State of Haryana [A.I.R.

1980 S.C. 1252], Rafiq vs. State of U.P. [1981 L.W. (Crl.) 41 (S.C.)], State of Maharashtra vs. C.K. Jain [1990 S.C.C. (Crl.) 210], State of Maharashtra vs. Prakash [1993 S.C. C. (Crl.) 411], State of Himachal Pradesh vs. Raghubir Singh [1993 (2) S.C.C. 622], Karnel Singh vs. State of M.P. [1995 (5) S.C.C. 518], State of Rajasthan vs. Om Prakash [2002 S.C.C. (Crl.) 1210] and State of Punjab vs. Gurmit Singh [1996 S.C.C. (Crl.) 316]}.

95. It has been held that the past promiscuous behaviour of the prosecutrix is no ground to condone the rape. The character, reputation or the status of a rape victim is not relevant while awarding sentence to a rapist {vide State of Punjab vs. Gurmit Singh [1996 S.C.C. (Crl.) 316] cited supra and State of Haryana vs. Premchand [1990 (1) S. C.C. 249]}.

96. After having considered the background of the case on hand, the principles of law and the facts and circumstances, we are fully satisfied that the evidence of the victim girls in this case are reliable, trustworthy and that there are no grounds to discredit the testimony of those victim girls. On the other hand, it is seen that they were able to come out of the physical and psychological control which A-1 was exercising over the poor orphan girls who had no place to look for and have revealed the sexual assaults on them by A-1. While evaluating the evidence, we are alive to the fact that they were not in a position to successfully protest on their being sexually assaulted by A-1 and also their failure to protest to the repeated sexual assaults and torture. They could neither come out of the ashram to tell these things to the police or anybody else as there was no assurance that their plea would be heard or taken note of. On the other hand, there was every possibility of their being subjected to much more serious assaults and possible death at the hands of the appellants. Therefore, the contention that the victim girls did not inform their teachers, their friends or their parents, has to be understood in the facts and circumstances of this case. Apart from the fact that in the normal course of human conduct, the unmarried girls and minor children, the victim girls in this case, would not have thought of informing the traumatic experience they had undergone and they would have felt terribly embarrassed in relation to the narrating the incidents to their teachers or others. Their psychological feeling of shame and their natural inclination to avoid talking about these things to anyone, besides getting over the fear, has to be understood in a proper perspective. Therefore, there is absolutely no substance in the argument that the victim girls ought to have informed the fact of rape to others. The appellants have miserably failed to show that the victim girls are of generally immoral character.

97. The Supreme Court has laid down that minor discrepancies, which are not fatal to the case, should be overlooked considering the inherent tendency of the victim girls to conceal the outrage of sexual aggression towards them. All the victim girls have withstood the cross-examination and they were able to repeat again and again, the details of the rape incidents, and their credibility and the story has been consistently spoken to inspite of the attempt of the defence, in some cases, having gone beyond the legal limit and to the extent of causing humiliation to the victims of the crime. They were asked to narrate minute details of the manner of the intercourse and the aftereffects of the same, the reaction and acts done by the victim girls

immediately after the rape, including their going to the bathroom, thereby casting a stigma on the character of the victim girls, which act on the part of the defence, has to be deprecated. P.W.14 is one such witness who had been subjected to humiliating cross-examination. In State of Punjab vs. Gurmit Singh [1996 S.C.C. (Crl.) 316]

cited supra, the courts were reminded of their duty to see that the victim girl is not harassed or humiliated on the plea of crossexamination. The courts should not sit as a silent spectator, while the victim of the crime is being cross-examined, without controlling the recording of the evidence in the court. The demeanour of the witnesses has been closely observed by the learned Sessions Judge. It has been observed that P.W.8, one of the prosecution witnesses, developed a kind of giddiness and unconsciousness when she was confronted with the question of her humiliation and the cross-examination had to be stopped at that juncture and continued only the next day. In reference to P.W.8, the court had noticed torrential flow of tears from the eyes of P.W.8 and with all the pain and conscience shocked, it is observed, the court listened to the most startling and saddening story of P.W.8 who was yet to attain mental maturity; though P.W.8 had attained puberty, she was yet to gain physical and mental maturity and even her childish voice was not broken to that of a grown up adult woman and her tearful narration was rebutted uncharitably with a suggestion that her tears were meant for causing prejudice in the mind of the Judge.

98. Similarly, the demeanour of P.W.4, P.W.5, P.W.9 and P.W.13 was also noticed by the learned Judge and it was observed that their evidence inspired confidence and the fact that they were trustworthy has to be accepted. The victim girls have no motive against A-1 and others, they having sheltered the girls, provided them food, etc. Absolutely no acceptable motive has been attributed against the victim girls in order to falsely implicate the appellants. We have also considered earlier, the suggestion that they were instigated, while considering their evidence individually.

99. In Govind vs. State of M.P. [1994 Crl.L.J. 938], the Supreme Court, while considering the discrepancies in the evidence of the prosecution witnesses, namely that they did not give many details of the occurrence in their statements under Section 161 and 164 Cr.P.C., that by itself, is not a ground to reject their evidence. In that case, the whole cross-examination was concentrated on those omissions. The High Court, in that case, after considering the evidence of those witnesses, has given sufficient good reasons for accepting their evidence against some of the accused persons. The High Court observed in that case that they were truthful witnesses. The Supreme Court did not interfere with the conviction and upheld it.

100. In Mohanlal Gangaram Gehani vs. State of Maharashtra [1982 S.C.C. (Crl.) 334], the Supreme Court held that when a prosecution witness is examined under Section 164 Cr.P.C. and makes a particular statement which is contradictory to a statement made in the Sessions Court, then Section 145 will apply if the accused wants to rely on that contradiction. But, where the statement made by a witnesses is contradicted not by his own statement but by

the statement of another prosecution witness, then the question of application of Section 145 does not arise. In that case, the evidence of the prosecution witness, P.W.11 was not only consistent throughout, but her earlier statement recorded could be taken to corroborate her subsequent statement. There was thus, no question of contradicting the statement of P.W.11 by her previous or subsequent statements. In that case, P.W.11, the doctor, made a note of the injuries received and also named his assailant as one Tiny. The evidence of the doctor, according to the Supreme Court, shows that Tiny was undoubtedly a known person and was not a fictitious person. The doctor was examined as a prosecution witness and therefore, her evidence cannot be excluded as being inadmissible as per Section 144 of the Indian Evidence Act. According to the Supreme Court, Section 145 applies only to cases where the same person makes two contradictory statements either in different proceedings or in two different stages of proceedings. In that case, P.W.11 was consistent throughout and therefore, there was no question of contradicting the statements of P.W.11 with her previous or subsequent statements. The Supreme Court further held that the statement of the injured to P.W.1, the doctor, being the first state ment in point of time, must be preferred to any subsequent statement and that takes away the entire bottom of the prosecution case. Further circumstances were pointed out by the Supreme Court which render the testimony of P.W.5 valueless. This decision is strongly pressed into service in support of the case of the appellants that the statements of the victim girls made to the doctors, being the first statements in point of time, must be preferred. First of all, most of the girls have simply stated that they had sexual intercourse with a known person and only some of the have specified A-1 as the known person. All the victim girls have explained the circumstances under which they could not reveal the name of A-1 before the doctors, and the Sessions Court as well as this Court have set out the background under which these girls were taken for medical examination and statements were given before the doctors while they were examined. It is fairly submitted by Mr. Shanmuga Velayutham that the Medical Code prohibits the doctors from entering the name of the assailants or the accused and therefore, they specifically enter as 'known person'. The doctor's evidence in this respect has not been contradicted. The evidence of the victim girls before the court, stating that the known person which they have mentioned in their medical examination certificates is referrable to A-1, has to accepted and the evidence of some of the victim girls, prior in point of time in reference to the assailant, has to be considered in the light of the background stated above and their subsequent consistent statement before the court has to be accepted. This decision has no application to this case.

101. In Sahdeo Gosean vs. King Emperor [1944 Madras Weekly Notes (Crl.) 57], the Federal Court held that the statement made by P.W.1 before the police cannot explain his failure to mention his name before the Magistrate and besides, under the provisions of Section 162 Cr.P. C., the statement made to the police during the course of investigation could be used only for the purpose of contradicting a prosecution witness and except in that connection, it could not be used for any other purpose and that the failure of the witness to mention the name of the accused in his statement to the Magistrate, probable subsequent statement against the accused made during the trial nearly four months later cannot be of value. In Noor Mohammed vs. Hakim [A.I.R.

1949 P.C. 161], it was held that evidence of criminal acts of the accused in other cases are admissible only to relevant issue. The issue, however, should have been raised in substance. Before an issue can be said to be raised which would permit the admission of such evidence so obviously prejudicial to the accused, it must have been raised in substance. In that case, the accused was tried for murder of a woman by poisoning her. Evidence was admitted to show that the accused had previously murdered another woman, his wife, under similar circumstances. It was held that the admission of the evidence was not justified as there was no direct evidence in either case that the accused had himself administered the poison. The court also held that if the appellant was proved to have administered poison to Aysha in circumstances consistent with the accident, then proof that he had previously administered poison to Goria in similar circumstances might well have been admissible. There was, however, no direct evidence in either case that the appellant had administered the poison himself.

Corroboration by medical evidence :
102. The medical evidence to the effect that all these girls are unmarried and that they were used to sexual intercourse corroborates the allegation that it is A-1 who had committed rape on them repeatedly. Insofar as P.Ws.7, 8, 9 and 10 are concerned, both the medical evidence as well as the radiological examination show that they were below 16 years of age at the time when they were subjected to rape. The Supreme Court, in Tahsildar Singh vs. State of U.P. [A.I.R. 1959 S.C. 1012], has held that Section 162 Cr.P.C., has confined the right of the accused to cross-examine the witness as to the previous statement made by him by contradicting the witness by referring to those parts of the writing which are inconsistent with the previous statement. It enables the prosecution to re-examine the witness to explain the matters referred to in the cross-examination. This also enables the prosecution to explain the alleged contradictions by pointing out that if a part of the statement used to contradict be read in the context of any other part, it would give a different meaning and that if so read, it would explain away the alleged contradictions.

103. The allegation that Section 160 Cr.P.C. has been violated is denied. The victim girls were taken to the Women Police Station at Pudukkottai and the Government Hospital and their statements were recorded. The ashram cannot be treated as a residence and the evidence of the victim girls has to be considered in the light of the constant threat and danger to the lives and security of the victim girls. Even assuming that the provision is violated, the evidence gathered will not become inadmissible and the evidence has to be weighed and considered according to law. The Special Public Prosecutor has denied the allegation of tutoring and access of the police to the prosecution witnesses as clearly established by the evidence of D.W.47, namely Vidyakar, the founder of 'Udavum Karangal' under whose custody the victim girls were entrusted.

[F] Women's Institution :
104. The question whether Premananda Ashram is an institution for women or children is important insofar as these appeals are concerned. It is contended that the ashram is a religious institution and will not come under

the category of institution for women and in any event, A-1 did not have any official position in the ashram.

105. We have seen earlier that A-1 is the founder of the ashram. He had the power of appointment of Mathajis who are supposed to run the administration of the institution. He has admitted that he is the power (sakthi) behind the ashram for Question No.1 under his questioning under Section 313 Cr.P.C. It is he who conducts the meetings, delivers lectures, performs miracles and gives religious discourses. From the evidence led in on both sides, we have no hesitation in holding that A-1 is the authority and holds an unquestionable position of management of the ashram. It is he who reprimands the inmates, including the deceased Ravi, punishes the inmates for coming late to the night watch, canes them, puts them in dog kennel, puts them in confinement, compels them to attend meetings, etc. The fact that he is holding the absolute control over the institution is beyond any doubt. Even though the defence witnesses are made to speak that A-1 is concerned only with the religious teaching imparted in the ashram and that the administration of the ashram rests with the Mathajis, it is improbable taking into consideration the overall evidence and the circumstances of the case. The letters, Ex.P.20 series, proved to have been written by A-1 by finger-print expert, containing his signature show that he had involved himself in the various activities of the ashram by participating in each and every activity of the ashram. He had expressed his concern even about the telephone bills of the ashram. Therefore, A-1 is in management and holds an official position in the institution. To Question No.26 (in the questioning under Section 313 Cr.P.C.), A-1 has admitted that there are 200 girls in the ashram and that they are being kept under the control of the Mathajis and the teachers. They also supervise the girls' menstrual conditions. To Question No.10, A-1 says that the girls entrusted to him were mostly orphans and that they were looked after for their clothing, food, residence and medical facilities by those in the ashram.

106. The second question that arises for consideration in this aspect is whether the institution is intended for women or children. Explanation-2 to Section 376(2) I.P.C. is as follows :

"'Women's or children's institution' means an institution, whether called an orphanage or a home for neglected women or children or widows' whom or by any other name, which is established and maintained for the reception and care of women and children."

It is in evidence that a number of victim girls are orphans and they have been brought to this institution, some of them when they were stranded in a bus stand or standing on a road or simply without parents, and they have been brought up in this institution. It is evidenced that 10-20 girls came over from Sri Lanka and it is A-1 who went and received them from Vedaranyam and Rameswaram, brought them to Tiruchy and temporarily housed them in a private rented building and therefafter, it is he who established the ashram in the year 1989 and brought them there. The fact that in the ashram, there are separate dormitories for women, hostel for them and they are given education and training in trade is not in dispute. Even the evidence of the defence is

to the effect that there are strict rules that boys should not go to the women's hostel and that they should not talk with them, etc. Therefore, the fact that this institution is an institution for housing the orphans, girls, women and children leaves no room for any doubt. The victim girls have been brought up from the age of 2-3 in the same institution initially in Sri Lanka and thereafter, to India. Therefore, it has to be held that Premananda Ashram is an institution for women and children.

107. Once it is found to be so, then the question of presumption as to absence of consent can be raised, as provided under Section 114-A of the Indian Evidence Act. Therefore, once sexual intercourse by A-1 is proved, the question whether it was wi r without consent of the girls is not relevant, since the evidence of the victim girls before the court is that they did not give consent, and

hence, the court is entitled to presume that they did not consent for the act of sexual intercourse by A-1. The argument on behalf of the appellants that many of the girls have given their consent for sexual intercourse, therefore, has no legs to stand. Even assuming it to be so, factually it is not correct.

Character of A-1, whether relevant ?
108. A serious charge of rape of 13 girls was made, four of whom are said to be below 16 years of age. The further allegations are that, taking advantage of the position of the orphan girls and his alleged fatherly affection, A-1 received these girls when they came out from their solitary stay on their attaining puberty by kissing them and fondling them and that he had used the cover of a guru for such nefarious activities. The further allegations that A-1 had schemed to make the girls available by putting them on night watch around his kudil so as to pick them up easily and the girls were made to undergo torture on their failure to concede to his demands and he had used the pooja room and the trance-interview room for his sexual activities and his repeated raping of girls show his propensity to commit rape on women and his sadistic pleasure to put these girls under fear and torture. The potency of A-1 was tested and he was found to be normal and capable of having sexual intercourse. The D.N.A. Test reveals that he had fathered the terminated foetus of P.W.14. Whereas, his reply in his questioning is that he is unaware of these earthly pleasures. The evidence on the side of the appellants is to the effect that he is an embodiment of virtue with the highest morality, simplicity and sincerity and he is a highly evolved spiritual master and he lives the life of a renunciated monk.

109. P.M.O.3 is a photograph in which the first accused is found in the midst of girls and the absconding accused Divya Devi. He is found embracing P.W.13, Vanitha in P.M.O.3. P.M.O.6 reveals the closeness between A-1 and the absconding accused Divya Devi. For Question No.32 in his questioning under Section 313 Cr.P.C., A-1 admits that there are 200 girls in the ashram and that there is nothing wrong in his embracing or kissing the girls in the ashram since he was moving with them like their parents and has also stated that he had done this in front of other also and that nobody had so far objected for such conduct of his. According to him, even the girls concede to his doing such things without any bad faith as if they are showing

their affection to their parents. From P.M.O.73, letters, it is seen that A-1, A-2 and Divya Devi have indulged in sexual relationship. In that letter, Divya Devi has stated that A-1 directed A-2 to kiss Divya Devi and when A-2 was kissing Divya Devi, thinking that A-1 is trying to test her and fearing, she immediately rolled over to the side of A-1. She further says that in substance, A-1 and A-2 both took her life out on that night. From this, it is clear that all the three were sharing the same bed and were having sexual relationship to the extent that Divya Devi was unable to cope up with both their demands in the same bed. P.M.O.73 series are letters written by Divya Devi to the second accused. In one of the letters, she had admitted that she had conceived because of A-1. According to her, even though she did not like sex from childhood onwards and that is the reason why she became a sanyasin, but however, A-1 had tested her many times and because of his divine play, she had conceived. Nirodh packets, Tidilon tablets, packets of alcohol and plastic syringes were some of the material objects recovered from the kudil of Divya Devi, as evidenced by P.M.Os.3 8 to 41. Divya Devi, the absconding accused, is one of the Mathajis and was functioning as de facto authority of

the ashram. It is not in dispute that the bank accounts are in the joint account of A-1 and Divya Devi. For all these reasons, it cannot be stated that the character of A-1 is not relevant.

110. In the charge, it is specifically stated that A-1 had misused the faith reposed in him and that he had sexually abused the victim girls by threat and deceptive practice and that he has outraged the modesty of the victim girls. The allegations are that A-1 had denuded the girls in front of other girls, that he had chosen the victim girls for night watch duty and forced them to have sexual intercourse with him, and on their refusal to concede to his illegal sexual demands, A-1 punished them on the false pretext that they were not their night watch properly and also tortured them by putting them in dog kennel (P.W.12), tied the girls along with a calf and made to run along with it (P.W.55), insisting to oil-massage his private parts (P.W.14), compelling to handle his private parts and have have sexual intercourse (P.W.17) are all acts which reflect the character of A-1.

111. Even though it has been repeatedly submitted on behalf of A-1 that the statements of the girls are improvements and that they did not initially mention these facts in their statements before the police or in their statements under Section 164 Cr.P.C., the said argument is not correct. Most of the girls have come out with their allegations against A-1 even in their statements under Section 164 Cr.P.C. They have come out more fully in evidence before the court because of the confidence they had gained that A-1 would no longer be in a position to harm them and considering the timidity of these orphan girls and the position they were placed, it is clear that their evidence are true and acceptable. The character of A-1 is relevant for the purpose of considering the charges.

112. For all these reasons, the findings of the learned Sessions Judge on the charge of rape are liable to be confirmed.

VI. Murder of Ravi :

113. Charge Nos.6 to 11 are concerned with the murder of Ravi. Ravi,

aged 30-35 years was an inmate of the ashram who was brought to India in or about 1990 by his sister from Sri Lanka. Ravi was put up along with A-4 in a kudil which was located opposite to the kudil of A-1 . He was assigned the job of watering and maintaining the plants. By virtue of the location of the kudil that Ravi was occupying, he had the opportunity of observing the activities going on in the kudil of A-1. On seeing that A-1 was having sexual relationship with the girls of the ashram, Ravi, having a disturbed mind, is said to have been openly shouting, without the normal inhibition, to the effect that A-1 was having sexual relationship with the girls. He was chastised by A-1 by caning earlier. But, inspite of that, after a few days, Ravi started shouting that A-1 was a womanizer. Because of the continued exposure Ravi was making as to the activities of A-1 and outraged by the open defiance and shouting of Ravi, A-1 himself called Ravi and also directed the other accused to bring A-1 to him. When Ravi was brought to him, he was ordered to be tied to a pole nearby. A-7 tied the deceased to the lamp post. Thereafter, A-1 took a casuarina stick and continuously beat him on the left leg and on the left hand. Consequently, Ravi had suffered blood injuries on his upper limb and the lower limb. A-1 ordered the ropes to be removed and the moment he was untied, Ravi fell down. Even thereafter, A-1 kicked him on the back and A-2 kicked him on the chest. The force of the beating was so much that even the lamp post is said to have fallen down. Thereafter, A-1 directed Ravi to be taken and confined in a room with a further direction that nobody should give him food or water. Accordingly, P.W.1, A-4, A-6 and A-7 dragged Ravi and locked him in a room called Kavadi Kudil. The key of the kudil was retained by A-2. P.W.1 left the ashram 2-3 days thereafter and returned to the ashram on 17.4.1991. When P.W.1 went and saw as to the condition of Ravi through the window, he found Ravi lying without breath. Thereafter, P.W.1 got the key of the kudil from A-2 and went inside the kudil to see the condition of Ravi. Ravi was found dead and swarmed by ants all over his eyes, mouth and other parts of the body where there were injuries. When P.W.1 went and reported the death of Ravi to A-1 and A-2, both of them received the news with no reaction and without any shock or surprise. Thereafter, as per the orders of A-1 and A-2, Ravi's body was cleaned, his face was shaved by P.W.1 and a new dhoti and a maroon coloured sweater given by Divya Devi were put on the dead body of Ravi. A-4 and A-7 assisted P.W.1 in getting these things done on the dead body. P.W.1 put the flower garland brought by A-4 and A-7 on the deceased Ravi and with the assistance of a foreign lady, a photo was taken of the dead body of Ravi. The body was removed by about 7-8 pm on that day with the assistance of the villagers who dug the pit. P.W.1, along with A-2 and A-5, buried the dead body of the deceased Ravi.

114. The overt acts of the accused have been spoken to by the eyewitnesses namely P.Ws.1, 3, 5, 8, 11, 16, 17 and 18. The defence witnesses who speak about the occurrence are D.Ws.1, 8, 12, 2, 11, 19 and 22. From the evidence of the prosecution and the defence witnesses, the following facts are not disputed :

(1) Ravi died and he was buried on 17.4.1991.
(2) Before burial, Ravi was given a bath, his face was shaved and he was clad with a full sleeved sweater (old) and a dhoti.

(3) The death of Ravi was not informed to the police. No information or complaint was given either to the Village Administrative Officer or to the police.
(4) No prior treatment of any kind was given to the deceased before his death.

115. The case of the prosecution is that Ravi died out of the injuries caused and consequential confinement and starvation accelerating his death. Whereas, the case of the appellants is that Ravi could have died on account of the self-inflicted injuries and that it was a natural death.

116. When A-1 was questioned under Section 313 Cr.P.C. on the aspect of the death of Ravi, for Question No.260 that on information of the death of Ravi, as to why A-1 and A-2 did not show any response, A-1 has replied stating that somebody came and informed him about Ravi's death and since he was a saint to whom happiness and sorrows are one and the same and therefore, he did not react . Besides, he says that he knew that Ravi's condition was deteriorating and that he was punishing himself. In reference to Question No.261 as to the direction of A-1 to bathe and clad Ravi with a sweater and dhoti, A-1 admitted that Ravi's body was cleaned and decorated, but says that he does not remember by which cloth he was adorned. However, he remembers that he had directed Ravi's body to be buried near the burial place of his uncle and before burial, there was a big prayer where all the people of the ashram had participated and the burial took place only after a procession and that for the purpose of taking a photograph, the body was decorated. This, according to him, was for the purpose of informing Ravi's family that things did not happen secretly. In reference to Question No.263 as to the time of burial of Ravi, A-1 says that the burial was between 5.30 and 6.30 pm and since there was no light near the burial place, a petromax light was used. A-1 also admits that Ravi was brought to the ashram by his mother and sister, though he does not remember the year. He also refers that Ravi was being specially taken care of. Some times, A-1 adds, Ravi acted with unbearable enrage and rudeness. From the answers of A-1, it could be seen that it is admitted that Ravi's physical condition was deteriorating and the further facts that he died and was buried in the ashram having not been disputed, the burden is on the defence to satisfactorily explain the cause of Ravi's death. The fact that Ravi was behaving violently is admitted. The case of the prosecution is that Ravi was enraged by the activities of A-1 and had started openly shouting that A-1 was indulging in sexual relationship with the girls. As per the prosecution evidence, after Ravi was beaten and locked up in the kavadi kudil with an order that nobody should provide him food or water, A-2 was keeping the key of that kudil. The prosecution witnesses were not questioned on the specific allegations which are consistently spoken to by all the prosecution witnesses in this case. Therefore, there was no foundation for the defence to put forward a different theory of self-inflicted injuries which resulted in the death of Ravi. In any event, there is no explanation for the confinement of Ravi in a kudil and his being locked there without any

food or water and A-1 having admitted of not showing any response on receipt of the information of Ravi's death stating that he was a sanyasi and hence he could not respond to the news of death.

117. P.W.17, who is the brother of P.W.9, who had been implicitly obeying the directions of A-1, has clearly spoken to about the overt act of the accused and the death of Ravi. According to him, on a particular day at about 12 noon in the year 1991, since the deceased was standing in front of A-1's kudil and shouting that A-1 was a womanizer and that he was having sexual intercourse with the girls in the ashram, A-1 directed A-7 to bring Ravi and tie him to the lamp post. Apart from the other overt acts spoken to by P.W.1 and corroborated by P.Ws.3, 5, 8 and 16, P.W.17 also says that after being locked in kavadi kudil, Ravi was shouting for food and water and since A-1 had issued a command not to provide food or water to him, he had not given the same to the deceased. He further says that on the next day of the burial, a meeting was convened by A-1 wherein A-1 warned all the inmates not to reveal about the incident of Ravi and that if anybody leaks out the same, they would meet the same fate as Ravi and hence, nobody dared to reveal the same outside. He further adds that before Ravi was beaten, Ravi had persisted in shouting in front of A-1 that he was a womanizer and that Ravi did not respond for the beating he received. It is pertinent to note that when Ravi was shouting that A-1 was a womanizer, nobody prevented him from shouting so.

118. P.W.18, who is the brother of P.W.5 and P.W.2, also speaks about Ravi's incident clearly. He says that since Ravi pulled himself unable to bear the beatings, the lamp post, to which he was tied, got bent. Thereafter, he says, A-1 directed A-7 to remove the ropes, consequent on which Ravi fell down and A-1 and A-2 kicked Ravi on his chest and backside respectively and that it was 12 noon at that time. Ravi was then directed to be locked in kavadi kudil and all others were directed not to provide him food or water and Ravi died 7-8 days thereafter.

119. P.W.3 also speaks about the overt acts of A-1 and A-7 in reference to Ravi's incident. P.W.3 says that she heard the plea of the deceased Ravi demanding food and water. P.Ws.5 and 8 also clearly speak of the said incident. P.W.11 says that Ravi informed her of the sexual relationship of A-1 with many girls. However, she says that she did not actually see Ravi being beaten, but only heard Ravi shouting while he was being beaten. She further says that when she asked as to why he should not be taken to the hospital, A-1 is said to have told her that it would better if Ravi disappears. She also refers to the order of A-1 that Ravi should not be provided with food or water after his being beaten and confined. P.W.16 also speaks clearly about the overt acts of the accused and as to how Ravi was put to death and also as to the meeting convened by A-1 subsequent to the burial of Ravi and the warning given by him therein.

120. D.W.1, who is the wife of P.W.1, gives her opinion that Ravi's death was natural and says that she used to take food to him daily and collect the cleaned clothes of Ravi. According to her, in May/ June 1991, when she went to Ravi's kudil to give him food, he was found lying and therefore, she requested other to go and see the condition of Ravi, upon which she was informed that he had died. She says that he was never starved of food and water, while she admits that normally, he would not be found lying in the bed. She says that she had stated in her affidavit that she sent the food to Ravi through her son 2 - 3 days prior to Ravi's death and that she had not stated

about the treatment given to Ravi in her affidavit. D.W.1 obviously is not telling the facts leading to the death of Ravi, but only speaks of the mental condition of Ravi.

121. D.W.8 says that she was ordained as Devi Mathaji in the year 19 93 and she was staying in the ashram between 1989 and 1992 and was in charge of foreign visitors. According to her, Ravi was aggressive towards others and against himself. The following are the specific questions and her answers to the same :-

Qn : Despite the deterioration of Ravi's mental and physical condition, no effort was taken to put him in the mental hospital either at Madurai or at Tiruchy ?
Ans: The ashram is not duty bound to put him in the mental hospital either at Madurai or at Tiruchy. Besides, I do not know whether there is any mental hospital in Madurai or in Tiruchy.
Qn : If any inmates of the ashram become seriously sick, that inmate would be shifted to the Tiruchy hospital for better management and treatment. What do you say ? Ans: Yes, it is correct. If any person is seriously ill and when he/she cannot be treated effectively in the ashram, treatment would be given to him/her in the Tiruchy hospital provided the person arrives in the ashram in a healthy condition. If a person is seriously ill or is suffering from a serious ailment, that inmate would be shifted to the Tiruchy hospital for treatment.

122. D.W.11, who is the resident of the ashram from 1990, says that Ravi was a mental patient, but admits that he was not treated in a big way. According to her, he used to pass stools outside. She is also one of the ordained Sanyasins of the ashram. D.W.19 says that he saw Ravi in the library and within a short time, he removed a tooth from his mouth. D.W.22 is the visiting doctor of the ashram and he says that he knew the person named Ravi and that he looked like any other patient and therefore, he did not pay much attention to Ravi, though he says that Ravi threw away biscuits and when he came near him, he was smelling urine and that he abused him and threw stones at him. Though D.W.22 is a doctor, admittedly he did not give any treatment to Ravi. The evidence of the defence witnesses is mainly intended to speak to the effect that Ravi was a mental patient and that he could have inflicted the injuries himself. However, all of them admit that no treatment was given to Ravi for his mental or physical condition. On the contrary, the prosecution witnesses namely P.Ws.1, 3, 5, 8, 16, 17 and 18, cogently speak about the overt acts of A-1 to A-7 and the direction of A-1 to confine Ravi and st arve him has been implicitly carried out by the other accused. A-2 kept the key of the kudil with him and no food and water was given to Ravi, even though he had been pleading and shouting for food and water. The circumstances set out above, coupled with the direct evidence of the prosecution witnesses clearly establish the case against the accused.

123. P.W.3, Sureshkumari, in her statement under Section 161(3) Cr. P.C. dated 17.11.1994, had narrated about the sexual acts of A-1, including the murder of Ravi and the involvement of P.W.1 in the same. The said

statement reached the Magistrate's Court immediately as early as on 20.11.1994. Thereafter, the offence under Section 302 I.P.C. was added to Crime No.1183 of 1994 on 23.11.1994. A-1 was examined in the presence of P.W.29, the Village Administrative Officer and on the basis of the admissible portion of the confession statement of A-7 that he would identify the place of burial of the deceased Ravi, Sections 302 and 201 I.P.C. were added to Crime No.1183 of 1994 as per Ex.P.200, the Express Report. As per the direction of P.W.28, the Tahsildar, issued in pursuance to the requisition, the skeletal remains of the deceased Ravi were exhumed on 22.11.1994 in the presence of the Tahsildar, Dr. Ravi Shankar, the Village Administrative Officer and other police officials and observation mahazars Exs.P.61 and 6 2 were prepared. The inquest report Ex.P.64 was submitted and thereafter, the skeletal remains were entrusted to P.W.46, who had conducted a post-mortem of the same and Ex.P.110 is the detailed post-mortem certificate.

124. In the post-mortem certificate Ex.P.110, the doctor refers to the commencement of the exhumation, the details of the identification of the place, digging, finding the skeletal remains and its removal. In that certificate, it is stated as follows :-

"At a depth of 45 cms. in the upper 1/3rd of the rectangular pit dug, a human skull and mandible with locks of hair adherent to the left fronts parieto temporal regions found being turned to its right. On seeing this, meticulous digging and cleaning done and at further depth of 5 to 10 cms. a completely skeletonised human remains, totally devoid of skin soft tissues muscles, ligaments, tendons, cartilages and organs was found with head and face portion turned to its right side and the left foot from the ankle joint level being kept underneath the right foot. The length from the vertex to the right heel was measured and found out to be 161 cms."
.....
"Though the clothings on their remains totally absent in the lower half of the skeleton, there was a Maroon coloured, full hand collared, acrylic 'T' shirt with a transversely placed grey band of 4.5 cms. width over the lower part of front of chest portion."
.....
"A manufacturer's tag was found over the inner aspect of the collar. This T shirt was identified to belong to the deceased by Kanthan S/o. Arumugam, Age 21Y/94, residing in the same Ashramam and Kumanan, S/o. Ambikanathan, Age 18Y/94, residing in the same Ashramam."

The report further says,
"All the bones of the above said skeleton except the sternum right pissiform two distal phalanges of the right hand four distal phalanges of the right foot, all carpal bones of the left hand, all phalanges of the left hand, upper end of the left fibula, left patella, all metatarsal bones of the left foot and all phalanges of the left foot which were found missing were meticulously collected, sealed and brought to this department for further detailed study of each bone individually.

Thereafter, the report gives the findings of the detailed study of each bone individually. The doctor's opinion is as follows :-

"OPINION : From the above examination we are of the opinion that :

1. The skeletal remains examined would appear to belong to a male aged above 30 years but below 36 years with a stature of 168 cms (consistent with the given history);

2. The deceased would have lost his 1st Molar tooth in the right upper quadrant, 1st premolar tooth in the left upper quadrant and the 2 nd premolar tooth in the left lower quadrant at any time, 6 months to 1 year prior to his death;

3. Death of the deceased would appear to have occurred 3 to 5 years prior to the day of exhumation i.e. 24.11.94; and

4. The Antemortem injuries seen in the examined skeletal remains were suggestive of the cause of death of the deceased to be due to Left Upper and Lower Limb injuries."

125. In his evidence as P.W.46, the doctor has stated that he had found 11 ante-mortem injuries and except one injury on the midline, all the other injuries were on the left side of the skeleton. According to him, he came to the conclusion that those 11 injuries are antemortem in nature for the following reasons :-

"1. In the above 11 suspected sites of antemortem injuries the Benzidine test were found to be immediately positive and the blue colour that developed in the reaction was much intense in contrast to the other uninjured sites and the stained areas;

2. On examination of the above skeleton in the suspected sites of antemortem injuries the bones showed faster demineralisation and consequent disintegration.

3. Even among the above suspected 11 sites of antemortem injury in sites where the bones were lighter, smaller and thinner have disintegrated completely and hence found missing.

4. In the above suspected 11 sites of antemortem injuries the vital reaction in the form of presence of blood or its elements have been found by me and by Benzidine test, and this vital reaction of presence of blood has been confirmed by the Chemical Analysis and Serology Report of the Forensic Sciences Department, Madras-4.

After sustaining the above said injuries in 11 sites if the injured person was under complete starvation without food or water, he would have survived for a maximum of 7-10 days. The fractures are grievous in nature. After sustaining the injuries if the person was under complete starvation such starvation would reduce the resistance power and the consequent infection

will be accelerating the process of death.

Question : Doctor what do you mean by infection resulting in acceleration of dying process ?

Answer : Due to total starvation reduced resistance to infection occurs and hence the bacteria causing such infection will be multi-fold in contrast to the normal injured person and will result in these bacterial entering into the blood stream and causing septicaemia and thus this state of septicaemia will accelerate the dying process."

126. In the chief-examination, the doctor has referred to the findings of the detailed study of the following bones individually. They are the skull, mandible, cervical vertebrae, thoracic vertebrae, lumbar vertebrae, sacrum, sternum, ribs, collar bones, scapulae, hip bones, right upper limb bones, right radius, right ulna, right carpal bones, right metacarpals, phalanges of right hand; right lower limb bones-right femur, right tibia, right fibula, right patella, tarsal bones of the right foot, metatarsals of the right foot, phalanges of the right foot; left upper limb bones-left humerus, left radius, left ulna, carpal bones of the left hand, metacarpals of the left hand, phalanges of the left hand; left lower limb bones-left femur, left tibia, left fibula, left patella, tarsal bones of the left foot, metatarsals of the left foot, phalanges of the left foot and hyoid bone.

127. The doctor, in his cross-examination, has stated that the Benzidine Test was done to the skeletal remains and that he had noticed three reactions, viz., a) Negative, b) Delayed Positive and c) Immediate Positive. Taking into consideration the nature of the reaction, i.e. immediate positive, he concluded that those injuries should have been ante-mortem. According to the doctor, in the following sites, the benzidine test was immediate positive :
1. Lower half of left Ulna,
2. Front half of the lateral condyle left femur,
3. Upper end of left tibia,
4. Upper end of left fibula,
5. In the area of the Carpal bones of left hand, and
6. Tarsal bones of the left foot.

The doctor, while elaborating the fractures on these bones, has stated as follows :-

"There was an antemortem fracture in the Left Ulna. The antemortem fracture is stated as 'a furrow like breakage in between the head and the styloid process at the lower end of the bone'. In my report, Ex.P.110, wherever I use the word breakage it is synonymous with fracture. In one part of my report I have also mentioned one fracture as antemortem fracture. Though the words 'fracture and breakage' refer to the antemortem injuries I used two different words to make a fine distinction between them. Fracture refers to the injury where discontinuity is through and through. Breakage means loss of bony tissues on the surface of a bone. In a simple manner it could be stated in a Fracture the bone is cut into two pieces. In my opinion

the loss of bony tissue on the surface of a bone is not a simple injury; it is a grievous injury. Over the head of the fifth m etacarpal bone of the left

hand a brownish black stain was spotted. When it was tested with Benzidine the reaction was immediate positive. There was no fracture or breakage on the head of the fifth metacarpal of the left hand.

The next site which reacted immediately positive to Benzidine was the left Femur. I have not mentioned any breakage or fracture of left Femur bone; Witness further adds : that the injury is mentioned as 'Depression'.

The next site which reacted immediately positive to Benzidine was left Tibia. Here also I have not stated any fracture or breakage of the left Tibia. The injury is referred to as 'Depression'.

Regarding the site Tarsal bones of the left foot which reacted immediately positive for Benzidine, I have not stated any fracture or breakage. The injury is referred to as 'The Broken surfaces of the three cuneiform bones'."

128. The doctor has stated that he might have done the benzidine test for the skeletal remains for as many as 33 sites and according to him, wherever the result of the benzidine test was immediate positive, the injuries are ante-mortem in nature. He has clarified that all other areas where the test was found to be negative or delayed positive, the breakages of the bones were osteo-porotic breakages due to demineralisation and due to the prolonged burial of the body. The doctor had also stated that though the conclusion arrived at conducting the benzidine test was an important one, all other reasons were also of equal importance in arriving at the conclusion. In reference to clause 4 of his opinion that the ante-mortem injuries were suggestive of the cause of death due to left upper and lower limb injuries, he has stated that the words 'suggestive of' are used by him in the sense 'indication of' and not in the sense 'suspicious of'. The evidence of P.W.46, Dr. Ravi Shankar, is cogent, clear and convincing and he has withstood the lengthy cross-examination and the challenge to many of his findings.

129. We find that the defence has gone at length to question the veracity of the conclusion arrived at by the doctor P.W.46 on unsustainable materials and grounds. The doctor has put in 16 years of practice in forensic medicine and according to him, he had conducted as nearly as 12,000 to 15,000 post-mortem examinations. He had attended and conducted 15 to 25 exhumation cases. Much is made out of certain corrections made by the doctor in his notes taken at the time of exhumation. Though usually, the notes that are prepared at the time of exhumation or at the time of examination of the bones are not produced before the court, they are produced only if they are required by the court and in this case, the doctor has readily produced those notes which are marked as Ex.D.32. He had conceded that there were corrections made by him, but denied the suggestion that they were made at a later date and then a date put as 24.11.1994. He has explained the reasons as to how the corrections had occurred as follows :-

"While collecting the bones, during the exhumation, I was giving dictation to the Scientific Assistant and he was taking down the particulars of the bones. After removing the gloves and after washing the hands, again when I verified the bones with that of the particulars of the bones written by the Scientific Assistant, as and where I found the mistakes, I corrected the same with my pen and initialled the same by putting the date. Ex.D.32 contains the writings of two persons, viz., my Scientific Assistant and myself. The main writings are that of the handwritings of my Scientific Assistant and I have made the corrections and wherever I made the corrections, I initialled there with dates."

The doctor says that for every human being, for each one hand and each one foot also, totally 14 Phalanges and the total body Phalanges are 56 in number. According to the corrected version, 32 Phalanges were recovered and 24 Phalanges were found missing. He further explains that when the bones were collected at the spot, in the rear of hands and foot, Phalanges were collected and when they were brought to the Department and carefully examined, 10 of them were found to be hardened soil or pieces of stones and that the length of each Phalange is 1 to 1.5 cms. According to the doctor, it is not correct to state that his Assistant was right in not writing the 10 Phalanges as against Item 30 in Ex.D.32 and it was a human error on his part and not of his Assistant. During the examination of the Phalanges in the Department, he had found that 10 of them described as Phalanges in Ex.D.32 were either hardened soil or pieces of stones and he had found them to be so before preparing Ex.P.110.

130. In Ex.D.32, the word 'not' was subsequently written when he referred to sternum. So also, there are some corrections in the word ' place' which was wrongly written as 'piece'. It was contended that the original writing should have been sternum found in piece and that P.W.46 has deliberately corrected it. The explanation of the expert witness in reference to the corrections made then and there is convincing. While describing this, the doctor has stated as follows :-

"STERNUM : The manubrium sterni, the body of the sternum and xiphi sternum were found conspicuously missing.

RIBS : All the twelve pairs of ribs were identified and all of them were found with irregular broken areas in different places due to osteo-porotic changes, consequent to prolonged burial which answered negative for 'Benzidine' test."

The doctor has also stated that in areas where there are injuries to the sternum, there is a possibility for the sternum to get disintegrated and disappear, where the ribs be in position. He further says that had there been injuries to the sternum, the sternum being light and narrow one, it would have disintegrated faster in comparison to the surrounding ribs without injuries and hence, the sternum would have completely disappeared.

131. The doctor has also given opinion that where the bones were found missing, the areas adjacent to the bones showed presence of blood and

the missing of bones was conspicuously on the left side in contrast to the right side which is convincing, namely that because the presence of blood in the areas of ante-mortem injuries, there was faster demineralisation and disintegration of smaller, lighter and thinner bones. The credibility of this witness cannot be assailed on the ground of corrections in the notes since he has produced the notes immediately on the requisition and as also explained why the corrections were made.

132. We do not find any ground to doubt the opinion of the doctor and his findings. In our view, he was fair to his examination and report. Where he concedes in his chief-examination that the deceased could have died even five years prior to the date of exhumation and he also says that the fracture might have been caused even by an accident and the fracture of the left leg and left fore arm need not necessarily be due to the blows by the stick. He further says that he knew that the benzidine test is discontinued abroad for about a decade but, he adds, not in India.

133. D.W.46, Dr. V.R. Purandhar, a Pathologist from J.J. Hospital, Bombay who had been working the Department of Forensic Medicine, Baroda Medical College and S.S.G. Hospital, was examined on the side of the defence in reference to the post-mortem certificate Ex.P.110 and as to the expert evidence of P.W.46. At the outset, we are thoroughly dissatisfied the way D.W.46 had expressed his opinion on the opinion of another expert. Some of his statements are extracted below :-

"It is totally scientific rubbish to say that the bone will disintegrate faster if there is blood on the bone compared to the bone without any blood."

"It is equally rubbish that if a bone has disappeared, it must be due to the presence of blood on it."

"In my opinion, his (Dr. Ravi Shankar, P.W.46) opinion is false. The opinion has been given without application of scientific mind."

"It is my firm opinion that there is no evidence of any ante-mortem injury to the bones. All the breakages and chippings are due to post-mortem. Disintegration and damage is natural during long burial and possibly due to the violence of the exhumation process."

He has characterised the opinion of P.W.46, another expert, as false. Without going into the veracity of the defence witness, it is has to be pointed out that it is rather unfortunate to note that an expert, who claims to be a M.D. in Pathology, should use the word 'false' while referring to the opinion of another expert and call that opinion as rubbish. Equally, we are totally unable to appreciate as to how he can say that the breakages and chippings are because of postmortem and that disintegration and damage was possibly due to the violence of the exhumation process.

134. D.W.46, in the cross-examination, has stated as follows :-

"I had no opportunity of seeing the place of exhumation. But, I have seen and examined the bones only in the court during the chiefexamination."

It is worthwhile here to recollect the meticulous manner in which the exhumation had taken place in the presence of the Tahsildar, the Village Administrative Officer and other police officials, and also the notes taken and the procedure followed while exhuming the skeletal remains of the deceased Ravi. The said report Ex.P.110 was issued after taking the bones to the laboratory and studying them scientifically and examining them. Whereas, D.W.46, without even seeing the place of exhumation or having had the opportunity of examining the bones in a laboratory with scientific tools, merely on a cursory glance at the bones, has given his opinion that the evidence of P.W.46 is false and that the breakages and chippings might have been due to the violence of the exhumation process. This would clearly go to show that D.W.46 is a highly interested witness got up for the purpose of discrediting the evidence of P.W.46 and his approach and the method of giving an opinion is not scientific and worthy to be accepted as an expert evidence. The Supreme Court, in Piara Singh vs. State of Punjab [19 77 S.C.C. (Crl.) 614], while dealing with the conflict of opinions of two competent experts, held that the opinion of the one supporting the direct evidence and the opinion of the doctor who performed the post-mortem preferably must be preferred and accepted. In Tanviben Pankaj Kumar Divedia vs. State of Gujarat [1997 (7) S.C.C. 156], the Supreme Court held that in case of a conflict of opinion of two doctors, the opinion of the doctor who actually examined the injured or held the post-mortem examination must be preferred to the expert opinion of the doctor who gave his opinion only on the basis of the injury report, x-ray report, post-mortem report, etc. In the absence of convincing evidence that the doctor holding post-mortem examination had deliberately given a wrong report, his evidence cannot be discarded. Even D.W.46, while agreeing that the first three opinions may or may not be correct and that he had not been asked to give opinion on those three points and that he had not applied his mind, he says that the fourth opinion was false because there was no evidence of any antemortem injuries and even if such injury was inflicted on the deceased before death, it was impossible to cause death.

135. The Chemical Report, Ex.P.111 is another crucial report which supports the case of the prosecution. This report is in reference to the chemical examination of the maroon full sleeved silken T.Shirt with grey band and white beeding along the chest and upper arm portion and with red woolen borders on which were dark brown stains. The report says as follows :-

"Detected blood on the above item."

In the Serology Report, Ex.P.112, the following result was noted :-
"T.Shirt - origin of grouping - human; result of
grouping test - inconclusive."

P.W.46 has stated that Ex.P.112, Serology Report, says that human blood was detected in the T.Shirt. Thus, it could be seen that the deceased Ravi was bleeding to death and even the bath given to his body could not completely remove the blood stains. The sweater had also retained blood to tell the

story of his bleeding injuries. Ex.P.113 is the Chemical Analysis Report of the soil at the head end of this skeleton, at the heel end of the skeleton, from both sides, in the middle portion, from above the skeleton and from below the skeleton at the level of the pelvis. The doctor says that while all the bones in the skeleton showed breakages in different degrees at different sites due to osteo-porosis consequent to prolonged burial, some such sites were suspected to be ante-mortem and hence soil around such sites was preserved and separately sealed and kept in their department to be sent to the Forensic Science Department, Madras. Ex.P.116 is the Chemical Analysis Report which detected human blood in the soil taken from around the left wrist joint. As per Ex.P.115, item No.1, soil from the head end of the skeletal remains, human blood was detected.

136. The evidence of P.W.46 is, therefore, strengthened by the serology report also, where human blood was detected in the soil from the head end of the skeletal remains, Ex.P.115 and soil collected from the wrist area, Ex.P.117 and blood having been also found in the sweater is another circumstance in favour of the prosecution. The doctor, P.W.46 had explained that the blood detected from the soil from the head end of the skeletal remains could be connected with the missing of sternum and the positive benzidine test over the anterior aspect of the upper thoracic vertebrae.

137. From the above, we have no hesitation in concluding that the medical evidence fully supports the case of the prosecution in reference to the death of the deceased Ravi.

138. On behalf of the appellants, in support of their theory that Ravi, being a lunatic, had inflicted injuries on his body on his own and that death would have been due to such injuries, they have filed Ex.D.66, the Psychatric Case Sheet of Ravi. The said document was marked through D.W.26, a Member of the Bar in Sri Lanka. According to him, A-1 is a messenger of God, sent to save mankind from suffering and also to impart spiritual teachings and he always taught to lead a virtuous and righteous life. He says that after the arrest of A-1, he was asked by the ashram authorities to contact the mental hospital in Angoda to get the copy of the psychatric case sheet pertaining to Ravi. The said document was marked subject to objection. As per this document, Ravi had suffered sleeping problem in the year 1990 and he was abusing and assaulting his family members and was uncontrollable at home and over-talkative. He was keeping q uiet and there was no evidence of any distrust. He was transferred to the Government Hospital and brought back to the O.P. in the year 1990. He escaped from the ward and went to the house, but was brought back to the hospital by S. Gnanandan, his brother and again, he was transferred to the Government Hospital. The certificate sets out the history of Ravi upto 23.3.1990.

139. From the above document, it can only be said that Ravi was suffering from a mental disorder at intervals. He was aggressive and over-talkative. From Ex.D.79, it could be seen that after leaving the mental hospital, he went back to his house. The diagnosis that he was talkative corroborates the prosecution evidence that he was questioning the activities of A-1 and was over-talking and aggressive on the activities of A-1 and also

courageous enough to shout about the misdeeds of A-1. The argument of the counsel for the appellants that Ravi was a raving lunatic and was unable to understand the happenings around him is contrary to the findings in Ex.D.66 which says that he had complete orientation towards person and time. As a matter of fact, he was taken to the ashram at Tiruchy with a hope that there was possibility for his complete cure. In contrast to this evidence, D.W.22, the doctor himself has stated that Ravi was found to be normal at times and that he did not think it necessary to treat him. The prosecution witnesses namely P.Ws.1, 3, 11, 16, 17 and 18 have all stated that there was nothing wrong with Ravi and that he was attending to the normal activities, including the reading of newspapers in the library. It is somewhat surprising to note that inspite of the alleged communication as to the death of Ravi to his mother, there was no response from his mother or his relatives. On the contrary, the statement of the family in Ex.D.48 that the Government of India has full power to take any legal action and proceedings with regard to this case and the absence of further letters or correspondence after the case was registered and the failure of the family members to attend the commission only strengthens the case that the family of Ravi did not accept the case that Ravi had met with a natural death.

140. The present attempt of the appellants to argue that Ravi was suffering from serious mental ailment has no legs to stand in the face of the failure of the ashram authorities, including D.W.22 and other persons, who are said to have been attending Ravi everyday in not giving treatment for Ravi. If really Ravi was as bad as it is now painted, their failure to give treatment to Ravi falsifies their story that he was roaming around the ashram with mental illness. The evidence of the defence witnesses is totally unbelievable and unsupported by any other independent evidence. When the victim girls were taken to the hospital for the purpose of conducting abortion upon their failure to get periods after 2-3 months in the car of A-1 and with assistance and funds, if really the ashram authorities felt that Ravi was insane and uncontrollable, nothing would have prevented them from admitting Ravi in a hospital for giving treatment.

141. Yet another argument is that Ravi had become so uncontrollable and hence, there was compulsion to confine him in a separate kudil. It is the case of the appellants that D.W.12 was taking care of Ravi. However, she was not competent to speak anything that happened to Ravi since she had admittedly left the ashram on 17.11.1991. D.W.1 as well as D.W.12 have stated that they had been giving food to Ravi regularly. D.W.1 also says that when she t ook food to Ravi in May/ June 1991, he was lying and since it was contrary to his usual behaviour, she became suspicious and asked others to examine Ravi and others, after examining him, found that Ravi was dead. Whereas, D.W.12 also says that on the day prior to the death of Ravi, that was on 16.11.1 991, in the evening, she went to Ravi's kudil and after cleaning the kudil, she left water in a jug and a bucket with a mug. Both these witnesses are contradicting one another and their evidence looks artificial. It is not in dispute that after the beating of Ravi, either on 10th or 11th April 1991, he was confined in the kudil and locked, the key of the kudil having been kept by A-2. The appellants have pleaded that Ravi was confined because he had become uncontrollable. Their version is unbelievable because they have not given any treatment to him for his uncontrollable behaviour. He

was not only confined, but was locked. D.W.12 does not say that he was giving food to the deceased Ravi. The evidence of D.W.1 has been commented upon by the learned Sessions Judge and she found her as a totally unreliable witness as she was highly interested in securing the release of A-1. We fully concur with the same.

142. Taking the clue from the medical report, Ex.P.110, evidence was led in to show that Ravi was capable of taking out his tooth by bare hands. It is highly improbable that an adult person like Ravi would be able to remove his tooth unless the tooth had already been decayed or was in a falling condition. From this, it could not be inferred that he would have caused injuries to himself. Assuming that Ravi had certain mental illness to the extent of showing his aggression and being talkative, that will not, in any way, justify the action of the accused in causing his murder.

143. It was argued on behalf of the appellants that the injuries that were caused to the deceased Ravi with casuarina stick were only on the non-vital parts of his body namely on the left upper limb and lower limb and kicking Ravi on his chest and back. It is argued that there might not have been any intention to cause the murder of Ravi with such beating and that at best, it could attract either Sections 323 or 324 I.P.C. The subsequent and prior actions of the accused have to be taken note of in this regard. A-1 has clearly indicated (vide the evidence of P.W.11) that Ravi should be disposed of as he was talking too much openly and shouting about the sexual acts of A-1 with the victim girls. So, it is clear that the beating was for the purpose of disposing of Ravi. The subsequent command of A-1 was that Ravi must be confined in the kudil and that nobody should give him food or water. This command was followed by the locking of the kudil by A-2. There is clear evidence that Ravi was shouting for food and water and nobody dared to give the same to him. Ravi was bleeding and was also starving, but no treatment was given to him and he was subjected to die in the most inhuman manner at the instance of and with the connivance of the accused. The statement of A-1 in his questioning under Section 313 Cr.P.C., that he did not feel shocked or surprised when he was informed that Ravi was dead, fully corroborates the knowledge of A-1 as to Ravi's condition. He received the news of the death of Ravi coolly and ordered the burial of the body in such a way as

not to give rise to a suspicion. All these things, coupled with the clear medical and prosecution evidence, lead to the inescapable conclusion that Ravi was murdered and that the accused are guilty of the charge of murder. The prosecution has established the guilt of the accused A-1, A-2 and A-4 to A-7 beyond any reasonable doubt. Hence, the finding of the learned Sessions Judge is hereby confirmed.

Approvers' Evidence :

144. Insofar as the evidence of the approvers P.W.1 and P.W.2 are concerned, it is seen that they were arrested on 21.12.1994 and their statements recorded on 29.12.1994. The Additional District Judge-cum-Chief Judicial Magistrate, Pudukkottai had recorded the Tender of Pardon of P.W.1

and P.W.2.

145. From the overt acts attributed to P.W.1 and the facts and circumstances, it is clear that the main test of reliability of participation in the criminal act has been satisfied in this case. P.W.1, in his evidence, has spoken to of his participation in the act. P.W.1 has involved himself fully in the murder of Ravi by assisting A-1. P. W.1 belongs to Yazhppanam, Sri Lanka. He knew A-1 prior to coming down to Tiruchy. He was staying along with his family in the ashram. Ravi was brought to ashram four or five months after P.W.1 came to the ashram. P.W.1 says that he was there when A-1 ordered Ravi to be brought to him because Ravi was shouting that A-1 was having sexual intercourse with the girls of the ashram. According to P.W.1, A-4, A-6 and A-7 brought Ravi before A-1. A-2 and A-5 were residing just opposite to the kudil of A-1. A-1 directed A-7 to tie Ravi to the lamp post. A-7 tied him to the post and thereafter A-1 repeatedly beat Ravi with a casuarina stick. Ravi suffered blood injuries on the left leg and left hand. When A-1 directed A-7 to untie the ropes, it was done and immediately thereafter, Ravi fell down. A-1 kicked Ravi on his back and A-2 kicked Ravi on his chest. The lamp post to which Ravi was tied got bent. As per the direction of A-1 that must be confined in a room without food or water, he, i.e. P.W.1, along with A-4, A-5 and A-6, dragged Ravi and put him in the kavadi kudil. When he took Ravi in that manner along with others, Ravi shouted at P.W.1 stating that he was acting like a pimp and that he should not stand in front of him. After P.W.1 returned from Madras on 17.4.1991 in the morning, he went to see Ravi and found him lying without breath. Thereafter, he went and got the key of the kudil from A-2 and opened the kudil to see Ravi. Ravi was found dead and his body was being covered with ants. P.W.1 informed this to A-1 and A-2 who did not show any surprise or shock. P.W.1 was directed to clean and clothe the dead body. Accordingly, P.W. shaved the face and bathed the dead body of Ravi. He clad the body with a sweater and dhoti. He also garlanded the body with flowers which were brought by A-4 and A-7. In the cross-examination, P.W.1 admits that initially, A-1 called him aloud so as to bring Ravi.

146. For question No.260, A-1 has admitted that somebody came and informed him of the death of Ravi and for question No.261, he admits that the body of Ravi was ordered to be cleaned and decorated, but does not remember who had done it, that he had directed them to bury Ravi near his uncle's burial place. Thereafter, the body was taken and a photo was taken so that it may be sent to the family of Ravi to enable them to know that nothing had happened in secret. The pertinent point here is that A-1 has not denied when a specific question was put to him that it was P.W.1 who had informed him about the death and that it was P.W.1 who was directed to clean and decorate the dead body.

147. From the above, it is clear that P.W.1 has implicitly obeyed the mandate of A-1 to drag Ravi and confine him in the kudil and he also refrained from giving food or water to the injured Ravi and thereby, P.W.1 has become a coconspirator in the conspiracy hatched at the scene of occurrence. He had involved himself in the overt act in abetting the murder by wrongfully

confining Ravi in the kavadi kudil. He had acquiesced himself to the criminal act by obeying the mandate of A-1 and intentionally abetting the murder of Ravi along with A-4 and A-7. In furtherance to the conspiracy, with a view to cause destruction of the evidence of the murder, P.W.1 had clean shaved the body of the deceased Ravi, clad the body with P.M.O.10, full sleeved sweater and the body was buried by P.W.1 and A-4 to A-7, thus giving it a colour of natural death.

148. The above conduct of P.W.1 clearly establishes that he had participated in the commission of the offence of murder from the beginning till the end. As it is in evidence that Ravi was talkative and had been openly shouting about the sexual acts of A-1 with the girls in the ashram and using abusive colloquial expressions to imply that A-1 was having sexual intercourse with the girls, and hence, A-1 called P.W.1 to bring Ravi and by that time he went there, A-2 and A-4 were already there near the kudil of A-1. A-4, A-6 and A-7 brought Ravi near the kudil of A-1 and therefore, it is clear that there was no pre-determined plan. The conspiracy was formed at that moment and therefore, the answer of P.W.1 that there was no predetermined plan has to be understood in the light of the facts of the case. P.W.1 has passed the test of reliability as his participation in the crime and the overt act of abetting the murder of Ravi, wrongfully confining him in the kavadi kudil and his subsequent conspiracy to cause destruction of the evidence of the murder, which has been admittedly done by P.W.1, would clearly establish that P.W.1 has participated in the criminal act and has satisfied the reliability test. The evidence of P.W.1 has been corroborated by the admission of A-1 and the evidence of other witnesses, especially P.W.17 and P.W.17 who speak clearly about the overt act of A-1 and A-2. Besides, it is further strengthened by the evidence of the victim girls P.Ws.3, 5, 16 and 18.

149. The main ground raised against the approver's evidence is that his evidence is unreliable and is brought about by the influence of the prosecution and once it is held to be unreliable, corroboration of his evidence is not going to help the case of the prosecution. Besides, it is submitted that P.W.1 has admitted that he did not participate in any pre-planned conspiracy and that he was deliberately arrested a month after the arrest of A-1.

150. The argument on behalf of the appellant that P.W.1 had reasons to speak against A-1 namely that A-1 had demanded for return of the money borrowed by P.W.1 from A-1 and the request of P.W.1 to ordain Gunananda as Sanyasi and that A-1 did not permit him to go abroad are not sufficient grounds for P.W.1 to have taken revenge on A-1. P.W.1 has denied that he had sought for the permission of A-1 to go abroad or that he had requested that Gunananda be ordained as the head of the ashram and he has also stated that he had returned the money borrowed by him from A-1. His evidence that at the request of P.W.13 and P.W.30 he also joined them in order to reveal the illegal activities of A-1 is convincing.

151. P.W.2, Nesan, the other approver in this case, came to this ashram along with his brother, P.W.18 and sister, P.W.5. According to P.W.2, about six months prior to the arrest, A-1 had instructed him to make love with

P.W.4. Though P.W.4 informed P.W.2 about her pregnancy through A-1, he had stated that even thereafter, he had intercourse with P.W.4, who was already raped by A-1. He further says that he did so on the directions of A-1. P.W.2 had such implicit fait in the divine powers of A-1 that he was prepared to bear the responsibility of the pregnancy of P.W.4 and the consequences of the rape on her by A-1. The evidence of P.W.2 is not exculpatory and the fact that he had acted on the directions of A-1 on the faith that he had with A-1 has been spoken to by P.W.2. Thereby, P.W.2 had involved himself in effacing the evidence of rape committed by A-1 on P.W.4 and caused termination of pregnancy and thereby intentionally aided the act of rape by A-1. P.W.2, under the directions of A-1, took P.W.4 to the doctor for terminating her pregnancy and he had disguised himself as Ramesh before Dr. Thangamani and thereafter, P.W.2 took P.W.4 to Dr. Muthulakshmi's Clinic where the abortion took place. In the consent letter given by P.W.4, Ex.P.94 for abortion, P.W.2 had also signed as Ramesh. He has paid Rs.3,000/- for aborting the pregnancy of P.W.4 and the said amount was given to him by A-1. P.W.4, in her evidence, had explained the compelling circumstances under which she was forced to give Ex.D.14, letter wherein she is said to have expressed her regret for having sexual relations with P.W.2, Nesan. If really P.W.4 had become pregnant in view of her love affair with P.W.2 on her own, definitely the ashram authorities would have taken steps to inform the same to her parents, who are living in the nearby village or at least would taken steps to send her out of the ashram. However, she was allowed to stay back in the ashram and with the financial assistance of A-1, she got her abortion done. The further argument to discredit the approver's evidence of P.W.2 is that he was deliberately not arrested at the time of the arrest of others and even after his arrest after a month, he was let to got on bail without any objection being raised and the same has been properly explained by the prosecution that though he was available initially, thereafter, he was absconding. As rightly pointed out by the prosecution, after the initial enquiry, the police investigating the case would have let him off after interrogation. Simply because there was a gap of one month between the arrest of P.W.2 and others, it does not make his evidence as bogus. The evidence of P.W.2 is trustworthy and his evidence is corroborated with material particulars as well as the evidence of the other prosecution witnesses.

152. After going through the evidence of P.W.2, we find that his evidence is not in any way exculpatory. Though he has generally acted on the directions of A-1, he speaks about his having sexual intercourse with P.W.4 even after he came to know that A-1 was responsible for her pregnancy. He took P.W.4 to the hospital at Tiruchy for doing an abortion on her and in this process, he had acted to remove the evidence of the rape committed by A-1 and acted overtly in causing the termination of the pregnancy of P.W.4, thus aiding the act of rape committed by A-1. There is nothing to discredit the testimony of P.W.2. Even though the reference by P.W.2 that he had no intention to suppress the evidence of rape committed on the victim girls and that he did not plan the rape, the consequent effacing of evidence of rape and the termination of pregnancy, it should only mean that there was no pre-determined plan or prior arrangement on the part of P.W.2. In reference to the murder of Ravi, P.W.2 says that after Ravi was brought, tied up and beaten, on the commands of A-1 that he should not be provided with food and

water, P.W.2, along with A-4, A-6 and A-7, dragged Ravi to the room (Kavadi Kudil). P.W.2 went and saw Ravi's condition through the window on 17.4.1991. Thereafter, he took the key of the room from A-2 and went inside the room and found Ravi dead. P.W.2 informed the matter to A-1 and A-2 who did not show any response. P.W.2 shaved Ravi and cleaned his body. Thus, it is clearly seen that P.W.2 had participated in the commission of the crime against Ravi.

153. In Bhiva Doulu Patil vs. State of Maharashtra [A.I.R. 1963 S.C. 451], while considering the combined effect of Sections 133 and 114 of the Indian Evidence Act, it was held by the Supreme Court that according to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter, which is a rule of practice, it is always almost unsafe to convict the accused upon the testimony of the accomplice alone. Therefore, though the conviction of an accused on the testimony of an acco mplice cannot be said to be illegal, yet the court will, as a matter of practice, not accept the evidence of such witness without corroboration in material particulars. Without corroboration of the approver qua a particular accused person, a conviction of that accused person is unsustainable, the law being that there should be corroboration of the approver in material particulars and qua each accused. In Sarwan Singh vs. State of Punjab [1957 Madras Weekly Notes (Crl.) S.C. 40], the Supreme Court held that the appreciation of an approver's evidence has to satisfy a double test-his evidence must show that he is a reliable witness and the approver's evidence must receive sufficient corroboration. This test is special to the case of a weak or tainted evidence like that of the approvers herein. In Yudhishtir vs. State of Madhya Pradesh [1971 S.C.C.(Crl.) 684], the Supreme Court held that corroboration for any evidence given by witness may be found necessary when a court is not inclined to reject the evidence of the witness to be false. But, when the evidence of a witness has been rejected as unacceptable, there is no scope for attempting to find corroboration by other independent evidence or other circumstances.

154. The Constitution Bench of the Supreme Court, in Saravana Bhavan vs. State of Madras [A.I.R. 1966 S.C. 1273], while considering the evidence of an approver and the value of corroboration, held that ordinarily, a court seeks for corroboration of the evidence of an approver before convicting an accused person on that evidence. Generally speaking, this corroboration is of two kinds. Firstly, the court has to satisfy itself that the statement of the approver is credible in itself and there is evidence other than the statement of the approver that the approver himself had taken part in the crime. Secondly, after the court is satisfied that the approver's statement is credible and his part in the crime is corroborated by other evidence, the court seeks corroboration of the approver's evidence with respect to the part of the other accused person in the crime and this evidence has to be of such a nature as to connect the other accused with the crime. But, it must be never be forgotten that before the court reaches the stage of considering the corroboration and its adequacy or otherwise, the first initial and essential question that has to be considered is whether even as an accomplice, the approver is a reliable witness. If the answer to this question is against the approver, then that is the end of the matter and no question as to whether his evidence is corroborated or not falls to be considered. In other words, the

appreciation of an approver's evidence has to satisfy the double test. His evidence must show that he is a reliable witness and that is a test which is common to all the witnesses. If this test is satisfied, the second test which still remains to be considered is that the approver's evidence must receive sufficient corroboration. But, there may be cases where the evidence of the approver is so thoroughly discrepant and so inherently incredible that the court might consider him wholly unreliable. It was further held that the antecedents of the approver do not really make him either better or worse. His evidence can only be accepted on its own merits and with sufficient corroboration.

155. In Subramanian vs. State of Tamil Nadu [A.I.R. 1975 S.C. 139], the Supreme Court accepted the evidence of the approver on being adequately corroborated from independent sources for upholding the conviction. In Ranjeet Singh vs. State of Rajasthan [1988 S.C.C. (Crl.) 22 9], it was held by the Supreme Court that while looking for corroboration, the court must look at the broad spectrum of the approver's version and then find out whether there is other evidence to lend assurance to that version. The nature and the extent of the corroboration may differ upon the facts of each case. While referring to the law laid down in this regard, well settled by several decisions, in that case, it was held that corroboration should not be of any direct evidence that the accused committed the crime. Corroboration even by circumstantial evidence may be sufficient. But, such evidence must be independent and must not be vague or unreliable. In Balbir Singh vs. State of Rajasthan [1997 (1) Crimes 67 (S.C.)], it was held that deposition of an approver about injuries caused on the person of the deceased can be substantially corroborated from medical evidence.

156. Insofar as the overt acts are concerned, the overt acts attributed to A-2 of kicking Ravi on his chest, confining him in the kudil and keeping the key of that kudil with him has been spoken to by P. Ws.1, 3, 5, 8, 16, 17 and 18. The overt acts attributed to A-4 of bringing Ravi to A-1, confining him in the kavadi kudil and his assistance to P.W.1 to clean and decorate the dead body of Ravi and its burial has been spoken to by P.Ws.1, 8, 16, 17 and 18. The overt acts attributed to A-6 have been spoken to by P.Ws.1, 3, 8, 16, 17 and 18. On the overt acts of A-1, P.Ws.1, 3, 5, 8, 16, 17 and 18 have spoken to the same. The argument of the counsel for A-4, A-6 and A-7 is that there was no direct involvement of the appellants and that that they did not have the intention to commit the offence of murder of Ravi.

157. In this context, the following decisions were relied on by the counsel for the appellants. In Ramnath vs. King, Emperor [1925 Allahabad 230], a learned Judge of the Allahabad High Court has held that the mere giving of an aid will not make the act of abetment of an offence, if the person who gave an aid did not know that the offence was committed or contemplated. The intention should be to aid an offence or to facilitate the commission of an offence. If the person who lends his support does not know or has no reason that the act which he was aiding or supporting was by itself a criminal act, it cannot be said that he intentionally aids or facilitates doing of that offence. To the same effect is the decision of another learned Judge in M. Shevanthi vs. Emperor [A.I.R. 1928 Nagpur 257]. In Hanuman vs.

State of Rajasthan [1994 S.C.C. (Crl.) 693], it was held that giving a bath to the dead body or going with the dead body to cremate it without giving a finding will not attribute intention of screening the offender from the legal punishment. In Mithu Singh vs. State of Punjab [200 1 S.C.C. (Crl.) 668], the Supreme Court has held that an inference regarding a common intention can be drawn from the acts or conduct of the accused from other relevant circumstances and only when such inference having been drawn with certain degree of assurance, that the question of culpable liability would arise. It was held that common intention has to be distinguished from the same or similar intention. It is true that it is difficult, if not impossible, to collect and produce direct evidence in proof of the intention of the accused and mostly, an inference as to the intention shall have to be drawn from the acts or conduct of the accused or other relevant circumstances as are available. In P.K. Narayanan vs. State of Kerala [1995 S.C.C. 215], it was held that the circumstances proved before, during or after the occurrence have to be considered before deciding the complexity of the accused.

158. For all these reasons, we hold that Charge Nos.6 and 8 to 11 have been established as against Accused 1, 2, 4, 6 and 7.

Charge No.12 :
159. A-1 is charged under Section 420 I.P.C. for having cheated and induced Mark Dennis and others to part with money on the basis of his claim of spiritual powers to perform 'Lingothbhavam' (taking out the Sivalinga alleged to have been materialised in the stomach from out of his mouth). The Sessions Court held that the charge has been proved.

160. At the outset, we have to point out that though the charge is said to have been framed on the basis of enquiry on the allegation of Mark Dennis and some other devotees that they were made to part with their money on the belief and deception practised by A-1, the charge is not framed under Section 415 I.P.C. for mak ing out a case of deception. The charge being under Section 420 I.P.C., in the absence of evidence of the persons who were alleged to have been induced dishonestly to deliver money have not been examined, no other evidence is available to show that A-1 was collecting money by his deception. The claim of A-1 that the lingams were formed in his stomach for ten months, that he would take them out on Sivarathiri night, that he had been used as an instrument by the God to come to this world, that seeing or holding these lingams will have miraculous cure for diseases and that A-1 could materialise viboothi and other items are matters which we need not go into in our discussion. Suffice it is to state that there is no proof of inducement of Mark Dennis and others to part with money so as to say that A-1 had cheated them. The court cannot, from circumstantial evidence, infer such an offence. Therefore, we hold that Charge No.12 has not been proved.

161. Learned counsel for A-3 referred to the decision of a Division Bench of the Mysore High Court, in In Re vs. Malayara Seethu [A.I.R. 1955 Mysore 27], wherein the Mysore High Court has held that there is a distinction between miscarriage to a woman "with child" and " quick with child" since a larger punishment is provided for the former. The Division Bench approved the view of Modi that legally, miscarriage means the premature expulsion of the

product of conception, an ovum or foetus from the uterus at any period before the full term is reached. Medically, three distinct terms namely abortion, miscarriage and premature labour are used to denote the expulsion of a foetus at different stages of gestation. Thus, the term 'abortion' is used only when an ovum is expelled within the first three months of pregnancy, before the placenta is formed, 'miscarriage' is used when a foetus is expelled from the fourth to seventh month of of gestation before it is viable, while 'premature labour' means delivery of a viable child possible capable of being reared before it has become fully matured. This judgment is not of any assistance to the accused since the expression 'miscarriage' means premature expulsion of the product of conception at any period before the full term is reached, even though medically there is a distinction between abortion, miscarriage and premature labour.

162. Parekh's Textbook of Medical Jurisprudence and Toxicology, Fourth Edition-1988 describes the methods to procure abortion. According to the author, there are two methods in common use to procure abortion. They are by drugs and by application of violence. The author says that inexperienced may first resort to drugs and when these fails, some instrument method is used. On the use of drugs, it is stated that many drugs are used as abortifacients. Most of them have no effect on the uterus or foetus unless they are given in toxic doses. The drugs which are commonly used as abortifacients may be classified as those acting directly on the uterus and those acting indirectly on the uterus. At the end of the 37th month of pregnancy, the foetus is 9 cm long floating in an ample supply of amenotic fluid and the osetore is closed. Contraction of the uterus wall in those circumstances can hardly be expected to empty the cavity to which the opening of osetore is necessary preliminary nor is it likely to damage the floating foetus or affect the placental supplies to any extent. Therefore, while such drugs can cause uterine contractions, they may not necessarily cause abortion and usually fail in the earlier months of pregnancy. Some of the drugs, it is stated, taken in extremely large doses, are sufficient to produce other effects, unpleasant and even dangerous. The drugs which are acting indirectly on the uterus or drugs commonly used for this purpose are irritants. These drugs are taken on the basis that any violent stimulation of the gastro-intestinal tract may result in an abortion by reflexly permitting uterine contractions. But, such effect is not constant. Large doses are taken to induce abortion. It is stated as follows:-

"In India, the drugs that are used for procuring abortion include camphor, the seeds of unriped fruit of carsica papayya, the unriped fruit of pine-apple, the seed of gajar, the milky juice of madar, the bark of lal chitra, sawa, karela, lavang, jaiphal, kesar and sanguinarea, etc. They have acquired undeserved reputation as abortifacients among the lay public. They act chiefly as irritants, although they are supposed to have specific effect on the uterus."

The role played by A-3 has been spoken to by the prosecution witnesses. The fact that she had been administering the drugs cannot be disputed in the light of the overwhelming evidence. The learned Sessions Judge has given convincing reasons for finding A-3 guilty of the charge framed against her. We do not

find grounds to sustain the submissions of the learned counsel for A-3. We, therefore, confirm the finding of the learned Sessions Judge as against the third accused.

163. Mr. Shanmuga Velayutham, learned counsel appearing on behalf of A-2, A-4, A-6 and A-7, though not raised in the grounds, submitted that the sentences of double life imprisonment for offences under Section 376 read with Section 109 I.P.C. and Section 302 read with Section 109 I.P.C. are illegal and unconstitutional. According to the learned counsel, the sentence of life imprisonment implies imprisonment for life and therefore, there is no scope for imposing a second life imprisonment on the accused. In support of his submissions he has relied on a number of decisions. Learned counsel referred to Section 53 of the Indian Penal Code which deals with punishments. One of the punishments provided for under that Section is imprisonment for life. Section 55 states that in every case in which a sentence of imprisonment for life had been passed, the appropriate Government may commute the punishment for imprisonment for either description for a term not exceeding 14 years. Therefore, according to him, unless commutation of the sentence is made, the sentence will mean imprisonment for the whole of the life of the accused.

164. In State of M.P. vs. Ratan Singh [1976 S.C.C. (Crl.) 428], it was held that a sentence for life would enure till the life time of the accused and the accused is not entitled to be released as of right on completing the term of 20 years, including the remission. In Gopal Vinayak Godsey vs. State of Maharashtra [A.I.R. 1961 S.C. 600], it was held that a sentence of imprisonment for life must, prima facie, be treated as imprisonment for the whole of the remaining period of the convicted person's natural life. In Naib Singh vs. State of Punjab [1983 S.C.C. (Crl.) 536], it was held that imprisonment for life means rigorous imprisonment for life. In Lakshman Naskar vs. Union of India [2000 S.C.C. (Crl.) 509], it was held by the Supreme Court that a life sentence is nothing less than life long imprisonment and by earning remissions, a life convict does not acquire a right to be released prematurely. It was held therein that if the Government has framed any rule or made a scheme for the early release of such convicts, then those rules or schemes will have to be treated as guidelines for exercising its power under Article 161 of the Constitution, and the convicts then have a right to put up their case for consideration. In Lakshman Naskar vs. State of West Bengal [2000 S.C.C. (Crl.) 1431], the Supreme Court held that solely on the basis of completion of a term in jail serving imprisonment, remission s earned under the relevant rules or law will not entitle an automatic release to the life convict, but the appropriate Government must pass a separate order remitting the unexpired portion of the sentence.

165. The provisions that we are concerned in this case, namely Section 302 and 376(2)(c) of the Indian Penal Code provide for imprisonment for life and imprisonment for a term, which may be for life. There is no bar under the Indian Penal Code to impose the punishment as provided for under the respective provisions for the respective offences. Whereas, Section 31 Cr.P.C. enables to impose several punishments. The fact that it may not be practicable for a person to undergo a second sentence of life imprisonment, cannot be a ground for not imposing a punishment. Therefore, we do not find

any merit in the said submission.

166. In State of A.P. vs. Polamala Raju [A.I.R. 2000 S.C. 2854], while considering the imposition of a sentence under Section 376(2) I.P.C., the Supreme Court held as follows :-

"We are of the considered opinion that it is an obligation of the sentencing court to consider all relevant facts and circumstances bearing on the question of sentence and impose a sentence commensurate with the gravity of the offence. The sentencing court must hear the loud cry for justice by the society and more particularly, in cases of a heinous crime of rape of innocent, helpless children, as in this case, of the victim of crime, and respond by imposing an appropriate sentence."

Their lordships have referred to the earlier decision of the Supreme Court in State of A.P. vs. Bedem Sundara Rao [1995 (6) S.C.C. 230] and emphasised the following passage :

"Imposition of grossly inadequate sentence and particularly against the mandate of the legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general, but also at times, encourages a criminal."
.....
"Public abhorrence of the crime needs a reflection through the court's verdict in the measure of punishment. The courts must not only keep in view the rights of the criminal, but also the rights of the victim of the crime and the society at large, while considering imposition of proper punishment. The heinous crime of committing rape on a helpless 13/14 years old girl shakes our judicial conscience. The offence was inhumane." (emphasis added)

Their lordships referred to another judgment of the Supreme Court in State of Karnataka vs. Krishnappa [2000 (4) S.C.C. 75] while referring to the imposition of punishment and approved the following passage :-

"The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with." (emphasis added)

167. We have considered the elaborate and well- considered judgment rendered by the learned Sessions Judge and we are in full agreement with the findings and conclusions arrived at by the learned Sessions Judge, including the consecutive sentences on A-1 and A-2 except in reference to the conviction and sentence on A-4, A-6 and A-7.

168. The prosecution has established that A-1 and A-2 have caused bodily injuries on the deceased Ravi with a casuarina stick on the left upper limb and lower limb and that both of them kicked Ravi on his back and chest when he fell down after being untied. Afterwards, Ravi was confined in a kudil without being provided with food or water on the instructions of A-1.

A-2 was keeping the key of the kudil with him. Admittedly, no food or water was given and Ravi was starved to death. The prior and subsequent conduct of A-1 and A-2 and the circumstances of the case, including motive, clearly establish the intention of A-1 and A-2 to commit the murder of Ravi and the overt acts committed by them for the murder. The charge against A-1 and A-2 for having committed the offence under Section 302 I.P.C. is, therefore, established and their conviction and sentence of life imprisonment imposed on them is hereby confirmed.

169. However, insofar as A-4 to A-7 are concerned, the prosecution case is that they have not provided food or water to the deceased Ravi and their subsequent conduct in causing the destruction of the evidence by burying the body of Ravi would show that they have also abetted A-1 and A-2 in committing the murder of Ravi. The prosecution has not established that A-4 to A-7 had the duty to provide food and water to the deceased Ravi and that they had, by their conduct, made the deceased Ravi to starve and die. From the circumstances of the case, an inference could be made that A-4 to A-7 had the knowledge that Ravi was likely to die by their act, but the intention of causing death cannot be attributed to them. Therefore, we are of the view that A-4 to A-7 are liable for the punishment for culpable homicide not amounting to murder under the Second Part to Section 304 I.P.C. and we impose a sentence of imprisonment for a period of ten years on A-4 to A-7 under Charge No.7.

170. In the result, we confirm the conviction and sentence imposed by the learned Sessions Judge in respect of A-4 to A-7 except for Charge No.7, which we have modified as above. However, in all other respects, the judgment of the learned Sessions Judge is hereby confirmed.

171. While imposing the fine amount on A-1, the learned Sessions Judge has taken into consideration the age of the victim girls, the trauma which they have undergone and the damage which they have suffered and hence ordered a fine of Rs.5,00,000/- on A-1 to be paid as compensation to each of the victim girl. We find that the fine imposed is commensurate with the crime and the capacity of A-1 to compensate. It is not in dispute that A-1 is holding a Joint Account with Divya Devi, the absconding accused to a tune of Rs.89,00,000/- and the operation of this account had been freezed under the orders of the court. Though an attempt had been made by a third party to represent that this amount represents the amount of a Trust and that it cannot be utilised by A-1 for paying the fine ordered to be paid by him, we have no hesita tion in rejecting such a representation made without any pleading and records. It only fortifies our apprehension that the appellants are trying to see that the fine amount is not recovered and thereby deprive the victim girls of their due compensation. As the amount in the bank is in the joint account of A-1, the said amount is liable to be utilised for payment of the compensation. Therefore, we direct the concerned, including the Bank and the Revenue Authorities, to permit and release the fine amount of Rs.61,30,000/- (Rs.61,20,000/- + Rs.10,000/-) and the compensation as ordered by the court, viz., Rs.5,00,000/- be paid to each of the victim girls, excepting P.W.11, Shantha, within a period of 15 days from the date of receipt of a copy of the operative portion of this judgment. A Division Bench of this

Court, in Criminal Miscellaneous Petition Nos.5291 of 1997 etc. filed in the above appeals, by order dated 15.9.1998, has directed that the entire frozen amount be invested in the respective banks subject to the ultimate decision in the appeals.

172. The appeals filed by A-1, A-2 and A-3 are dismissed and the conviction and sentence imposed by the learned Sessions Judge is hereby confirmed (except on one count in reference to P.W.11, Shantha). The appellants, viz., A-1 and A-2 have committed the heinous crime of rape on the girls in an Ashram and also a murder. Inasmuch as there was one charge of rape on 12 girls, the Sessions Court has awarded one life sentence for the offence under Section 376(2)(c) I.P.C. A-1 and A-2 have been found guilty of murder under Section 302 I.P.C. The offences of rape and murder are not in the course of the same transaction. The Supreme Court, in Mohd. A. Hussain vs. Assistant Collector, Customs (Prevention), Ahmedabad [A.I.R. 1988 S.C. 2143], has held that if the transaction relating to the offences is not the same or the facts constituting the two offences are quite different, consecutive sentences may be imposed. Justice to the victims of crime of this nature could be done only if the maximum sentence permissible in law is imposed on the accused. Considering the gravity and the manner of acts committed on innocent, poor orphan girls and the inhuman manner of murder of Ravi, the sentences imposed on the accused should be undergone by them consecutively in order to meet the ends of justice.

173. The appeal filed by A-4, A-6 and A-7 is allowed to the extent indicated, in the sense that except for Charge No.7, which we have modified as stated above, the conviction and sentence imposed by the learned Sessions Judge as against A-4, A-6 and A-7 are confirmed. Considering the facts and circumstances, viz., the overt acts committed by them as per the directions of A-1, we are of the view that justice will be done by allowing them (A-4, A-6 and A-7) to undergo the imprisonment awarded to them concurrently.

174. We hereby confirm the findings, the conviction and the sentence imposed by the learned Sessions Judge subject to the above modification. The summary of convictions and sentences is as follows :-

Charge Nos. (1)
Convicted Under Section (2)
Accused (3)
Sentence of Imprisonment / Fine Imposed (4)
1

120(B) I.P.C.
A-1 to A-7
No separate sentence.
2

376 (2)(c) I.P.C. (12 Counts)

A-1
Imprisonment for LIFE and to pay a fine of Rs.5,10,000/- on each count. In default, Rigorous Imprisonment for a further period of Two Years and Six Months. (Total fine Rs.61,20,000/-). Imprisonment for LIFE on each count is

to run concurrently.
3

376 r/w 109 I.P.C.
A-2, A-4, A-6 & A-7

A-3
Imprisonment for LIFE on each accused.

Rigorous Imprisonment for Two Years, 7 Months and 2 Days (Period of sentence already undergone) and to pay a fine of Rs.10,000/-. In default, Rigorous Imprisonment for a further period of 3 Months.
4

354 I.P.C. (One Count)
A-1
No separate sentence.
5

312 I.P.C (Four Counts)

A-3
Rigorous Imprisonment for Two Years, 7 Months and 2 Days (period of sentence already undergone) and to pay a Fine of Rs.5,000/- on each count. In default, Rigorous Imprisonment for a further period of 45 Days. (Total Fine Rs.20,000/-)
6

302 I.P.C.

302 r/w 34 I.P.C.
A-1

A-2
Imprisonment for LIFE and to pay a Fine of Rs.10,000/-. In default, Rigorous Implicating for a further period of 3 Months.

Imprisonment for LIFE and to pay a Fine of Rs.10,000/-. In default, Rigorous Imprisonment for a further period of 3 Months.
7

304 I.P.C.
A-4, A-6 and A-7
Imprisonment for Ten Years and to pay a Fine of Rs.10,000/-. In default, Rigorous Imprisonment for a further period of 3 Months on each accused.
8

343 I.P.C.

A-1, A-2, A-6 to A-7
No separate sentence.
9

201 r/w 304 I.P.C.
A-6 & A-7
For each accused, Rigorous Imprisonment for ONE Year and to pay a Fine of Rs.2,500/-. In default, Rigorous Imprisonment for a further period of ONE Month. (R.I. For One Year is to run concurrently with the sentence under Charge 7).
10

201 r/w 114 I.P.C.
A-2
Rigorous Imprisonment for ONE Year and to pay a Fine of Rs.2,500/-. In default, Rigorous Imprisonment for a further period of ONE Month. (R.I. For ONE Year is to run concurrently with the sentence under Charge 6).
11

506 (Part II) I.P.C. (2 Counts)
A-1, A-2 A-4, A-6 and A-7
No separate sentence.
12

420 I.P.C.
A-1
Acquitted.

CONVICTION ACCUSED WISE :
A-1 .. Convicted under Secs.120(B) I.P.C.; 376(2)(c) I.P.C. (12 Counts); 354 I.P.C. (1 Count); 302 I.P.C.; 343 I.P.C. and 506 (Part II) I.P.C. (2 Counts).

A-2 .. Convicted under Secs.120(B) I.P.C.; 376 r/w 109 I.P.C.; 302 r/w 34 I.P.C.; 343 I.P.C.; 201 r/w 114 I.P.C. and 506 (Part II) I.P.C. (2 Counts).

A-3 .. Convicted under Secs.120(B) I.P.C.; 376 r/w 109 I.P.C. and 312 I.P.C. (4 Counts)

A-4 .. Convicted under Secs.120(B) I.P.C.; 376 r/w 109 I.P.C.; 304 I.P.C.; 343 I.P.C. and 506 (Part II) I.P.C. (2 Counts).

A-6 & A-7 .. Convicted under Secs.120(B) I.P.C.; 376 r/w 109 I.P.C.; 304 I.P.C.; 343 I.P.C.; 201 r/w 304 I.P.C. and 506 (Part II) I.P.C. (2 Counts).

1st Accused : The sentence imposed on A-1 on Charge Nos.2 and 6 are to run consecutively. Total Fine on A-1 is Rs.61,30,000/- (Rs.61,20,000/- + Rs.10,000/-). Sentences imposed on A-1 in default of payment of fine on each count are to run separately and consecutively apart from the above sentence of imprisonments. In default of payment of fine, Total further sentence to undergo : 32-1/2 Year + 3 Months.

2nd Accused : The sentence imposed on A-2 on Charge Nos.3 and 6 are to run consecutively. Total fine on A-2 Rs.12,500/- (Rs.10,000/- + Rs.2,500/-). The sentences imposed on A-2 in default of payment of fine is to run consecutively apart from the above sentence of imprisonments.

3rd Accused : Sentence imposed on A-3 on each count on Charge No.5 is to run concurrently. The sentence of imprisonment imposed on A-3 on Charge No.3 is to run concurrently with the sentence imposed on her under Charge No.5. Total fine on A-3 : Rs.30,000/- (Rs.10,000/- + Rs.20,000/-). The sentence imposed on A-3 in default of payment of fine is to run separately and consecutively.

4th Accused : The sentence of imprisonment on Charge Nos.3 and 7 are to run concurrently. Fine amount on A-4 : Rs.10,000/-. The sentence of imprisonment imposed in default of payment of fine is to run separately.

Accused 6&7 : The sentence of imprisonment imposed on each of these Accused on Charge Nos.3 and 7 are to run concurrently. Total fine : Rs.12,500/- each (Rs.12,500/- X 2 = Rs.25,000/-). The

sentence of imprisonment imposed in default of payment of fine is to run separately and consecutively.

Total fine on A-1 to A-7 ..... Rs.62,07,500/-.

Out of the payment of fine of Rs.61,30,000/- collected from A-1 under Sec.357(1) & (3) Cr.P.C., a compensation of Rs.5,00,000/- is to be paid to each of the victim girls, P.W.3-Sureshkumari; P.W.4Nallammal; P.W.5-Princy, P.W.6-Mary; P.W.7-Selvakumari @ Manjula; P.W.8-Sugunakumari @ Sudha; P.W.9-Pushparani; P.W.10-Sasikumari @ Jaya; P.W.12Udayakumari; P.W.13-Vanitha; P.W.14-Aruljothi and P.W.15-Malligadevi (Rs.5,00,000 X 12 =

60,00,000/-).

Criminal Miscellaneous Petition Nos.780 to 782 of 1998 are closed.

VII. Observations :
175. The above criminal proceedings are unique of its kind. It has shown the vulnerability of orphans, especially girls and the need for their protection. It has revealed to what extent persons professing as spiritual gurus could screen their true picture. But for the small step taken by one of the victim girls and the timely help provided to her by the All India Women Democratic Association and "The Indian Express", the whole episode would not have seen the light of the day. Persons like A-1 could have continued his spoils unhindered.

176. The above case demonstrates the urgent need for updating the scientific investigation techniques and experts' opinion. Much of the energy spent on gathering oral evidence and their risk of being tampered can be saved. It will help speedy investigation and successful trial. All the advanced countries have made laws for gathering and test-finding D.N.A. We must not lag behind.

177. We reiterate that investigation and courts must be sensitive, helpful and understanding towards the victims of rape. We must expedite the proceedings at all levels in order to put an end to the agony and the tampering of the victim girls so that they can be restored to normal life.

178. Women police and lady judges could be able to inspire confidence and understanding the victims of such crimes. Therefore, wherever possible, the enquiry, recording and trial in matters concerning rape cases could be entrusted to lady officers and judges.

179. We record our appreciation for the good investigation done in this case and the painstaking work done by the trial court.

(P.S.M., J.) (M.C., J.)
Index : Yes 12th December, 2002
Internet : Yes
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To

1. The Principal Sessions Judge, Pudukkottai.
2. The District Collector, Pudukkottai.
3. The Director General of Police, Chennai-4.
4. The Superintendent, Central Prison, Tiruchy.
5. The Superintendent, Central Prison, Cuddalore.
6. The Public Prosecutor, High Court, Chennai.
7. The Inspector of Police,
C.B., C.I.D., Pudukkottai,
Viralimalai Police Station.